
IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT, DIVISION FOUR

Civ. No. B 069450
(Super. Ct. No. BC 052395)

CHURCH OF SCIENTOLOGY INTENTIONAL,

Plaintiff-Respondent

-vs-

GERALD ARMSTRONG,

Defendant-Appellant.

On Appeal From Superior Court Of The State Of California
County of Los Angeles
The Honorable Ronald M. Sohigian

APPELLANT'S APPENDIX IN LIEU OF CLERK'S TRANSCRIPT, VOLUME III

466-721

Ford Greene
HUB LAW OFFICES
California State Bar No. 107601
711 Sir Francis Drake Boulevard
San Anselmo, California 94960-1949
Telephone: (415) 258-0360

PAUL MORANTZ, ESQ.
P.O. Box 511
Pacific Palisades,
California 90272
(213) 459-4745

Attorneys for Appellant
GERALD ARMSTRONG

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FILED

JUN 22 1984
John J. Concoran,

Rosie M. Hart
BY ROSIE M. HART, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

CHURCH OF SCIENTOLOGY OF CALIFORNIA,

Plaintiff,

vs.

GERALD ARMSTRONG,

Defendant.

MARY SUE HUBBARD,

Intervenor.

No. C 420153

MEMORANDUM OF
INTENDED DECISION

In this matter heretofore taken under submission, the Court announces its intended decision as follows:

As to the tort causes of action, plaintiff, and plaintiff in intervention are to take nothing, and defendant is entitled to Judgment and costs.

As to the equitable actions, the court finds that neither plaintiff has clean hands, and that at least as of this time, are not entitled to the immediate return of any document or objects presently retained by the court clerk. All exhibits

received in evidence or marked for identification, unless specifically ordered sealed¹, are matters of public record and shall be available for public inspection or use to the same extent that any such exhibit would be available in any other lawsuit. In other words they are to be treated henceforth no differently than similar exhibits in other cases in Superior Court. Furthermore, the "inventory list and description," of materials turned over by Armstrong's attorneys to the court, shall not be considered or deemed to be confidential, private, or under seal.

All other documents or objects presently in the possession of the clerk (not marked herein as court exhibits) shall be retained by the clerk, subject to the same orders as are presently in effect as to sealing and inspection, until such time as trial court proceedings are concluded as to the severed cross complaint. For the purposes of this Judgment, conclusion will occur when any motion for a new trial has been denied, or the time within such a motion must be brought has expired without such a motion being made. At that time, all documents neither received in evidence, nor marked for identification only, shall be released by the clerk to plaintiff's representatives. Notwithstanding this order, the parties may

1. Exhibits in evidence No. 500-40; JJJ; KKK; LLL; MMM; NNN; OOO; PPP; QQQ; RRR; and 500-QQQQ.

Exhibits for identification only No. JJJJ; Series 500-DDDD, EEEE, FFFF, GGGG, HHHH, IIII, NNNN-1, OOOO, ZZZZ, CCCCC, GGGGG, IIIII, KKKKK, LLLLL, OOOOO, PPPPP, QQQQQ, BBBBBB, OOOOOO, BBBBBB.

1 at any time by written stipulation filed with the clerk obtain
2 release of any or all such unused materials.

3 Defendant and his counsel are free to speak or communicate
4 upon any of Defendant Armstrong's recollections of his life as
5 a Scientologist or the contents of any exhibit received in
6 evidence or marked for identification and not specifically
7 ordered sealed. As to all documents, and other materials held
8 under seal by the clerk, counsel and the defendant shall remain
9 subject to the same injunctions as presently exist, at least
10 until the conclusion of the proceedings on the cross complaint.
11 However, in any other legal proceedings in which defense
12 counsel, or any of them, is of record, such counsel shall have
13 the right to discuss exhibits under seal, or their contents, if
14 such is reasonably necessary and incidental to the proper
15 representation of his or her client.

16 Further, if any court of competent jurisdiction orders
17 defendant or his attorney to testify concerning the fact of any
18 such exhibit, document, object, or its contents, such testimony
19 shall be given, and no violation of this order will occur.
20 Likewise, defendant and his counsel may discuss the contents of
21 any documents under seal or of any matters as to which this
22 court has found to be privileged as between the parties hereto,
23 with any duly constituted Governmental Law Enforcement Agency
24 or submit any exhibits or declarations thereto concerning such
25 document or materials, without violating any order of this
26 court.

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This court will retain jurisdiction to enforce, modify, alter, or terminate any injunction included within the Judgment.

Counsel for defendant is ordered to prepare, serve, and file a Judgment on the Complaint and Complaint in Intervention, and Statement of Decision if timely and properly requested, consistent with the court's intended decision.

Discussion

The court has found the facts essentially as set forth in defendant's trial brief, which as modified, is attached as an appendix to this memorandum. In addition the court finds that while working for L.R. Hubbard (hereinafter referred to as LRH), the defendant also had an informal employer-employee relationship with plaintiff Church, but had permission and authority from plaintiffs and LRH to provide Omar Garrison with every document or object that was made available to Mr. Garrison, and further, had permission from Omar Garrison to take and deliver to his attorneys the documents and materials which were subsequently delivered to them and thenceforth into the custody of the County Clerk.

Plaintiff Church has made out a prima facie case of conversion (as bailee of the materials), breach of fiduciary duty, and breach of confidence (as the former employer who provided confidential materials to its then employee for certain specific purposes, which the employee later used for other purposes to plaintiff's detriment). Plaintiff Mary Jane Hubbard has likewise made out a prima facie case of conversion

1 and invasion of privacy (misuse by a person of private matters
2 entrusted to him for certain specific purposes only).

3 While defendant has asserted various theories of defense,
4 the basic thrust of his testimony is that he did what he did,
5 because he believed that his life, physical and mental well
6 being, as well as that of his wife were threatened because the
7 organization was aware of what he knew about the life of LRH,
8 the secret machinations and financial activities of the Church,
9 and his dedication to the truth. He believed that the only way
10 he could defend himself, physically as well as from harassing
11 lawsuits, was to take from Omar Garrison those materials which
12 would support and corroborate everything that he had been
13 saying within the Church about LRH and the Church, or refute
14 the allegations made against him in the April 22 Suppressive
15 Person Declare. He believed that the only way he could be sure
16 that the documents would remain secure for his future use was
17 to send them to his attorneys, and that to protect himself, he
18 had to go public so as to minimize the risk that LRH, the
19 Church, or any of their agents would do him physical harm.

20 This conduct if reasonably believed in by defendant and
21 engaged in by him in good faith, finds support as a defense to
22 the plaintiff's charges in the Restatements of Agency, Torts,
23 and case law.

24 Restatement of Agency, Second, provides:

25 "Section 395f: An agent is privileged to reveal
26 information confidentially acquired by him in the course
27 of his agency in the protection of a superior interest of
28 himself or a third person.

1 "Section 418: An agent is privileged to protect
2 interests of his own which are superior to those of the
3 principal, even though he does so at the expense of the
4 principal's interest or in disobedience to his orders."

5 Restatement of torts, Second, section 271:

6 "One is privileged to commit an act which would
7 otherwise be a trespass to or a conversion of a chattel in
8 the possession of another, for the purpose of defending
9 himself or a third person against the other, under the
10 same conditions which would afford a privilege to inflict
11 harmful or offensive contact upon the other for the same
12 purpose."

13 The Restatement of Torts, Second, section 652a, as well as
14 case law, make it clear that not all invasions of privacy are
15 unlawful or tortious. It is only when the invasion is
16 unreasonable that it becomes actionable. Hence, the trier of
17 fact must engage in a balancing test, weighing the nature and
18 extent of the invasion, as against the purported justification
19 therefore to determine whether in a given case, the particular
20 invasion or intrusion was unreasonable.

21 In addition the defendant has asserted as a defense the
22 principal involved in the case of Willig v. Gold, 75
23 Cal.App.2d, 809, 814, which holds that an agent has a right or
24 privilege to disclose his principal's dishonest acts to the
25 party prejudicially affected by them.

26 Plaintiff Church has asserted and obviously has certain
27 rights arising out of the First Amendment. Thus, the court
28 cannot, and has not, inquired into or attempted to evaluate the

merits, accuracy, or truthfulness of Scientology or any of its precepts as a religion. First Amendment rights, however, cannot be utilized by the Church or its members, as a sword to preclude the defendant, whom the Church is suing, from defending himself. Therefore, the actual practices of the Church or its members, as it relates to the reasonableness of the defendant's conduct and his state of mind are relevant, admissible, and have been considered by the court.

As indicated by its factual findings, the court finds the testimony of Gerald and Jocelyn Armstrong, Laurel Sullivan, Nancy Dincalcis, Edward Walters, Omar Garrison, Kima Douglas, and Howard Schomer to be credible, extremely persuasive, and the defense of privilege or justification established and corroborated by this evidence. Obviously, there are some discrepancies or variations in recollections, but these are the normal problems which arise from lapse of time, or from different people viewing matters or events from different perspectives. In all critical and important matters, their testimony was precise, accurate, and rang true. The picture painted by these former dedicated Scientologists, all of whom were intimately involved with LRH, or Mary Jane Hubbard, or of the Scientology Organization, is on the one hand pathetic, and on the other, outrageous. Each of these persons literally gave years of his or her respective life in support of a man, LRH, and his ideas. Each has manifested a waste and loss or frustration which is incapable of description. Each has broken with the movement for a variety of reasons, but at the same time, each is, still bound by the knowledge that the Church has

1 in its possession his or her most inner thoughts and
2 confessions, all recorded in "pre-clear (P.C.) folders" or
3 other security files of the organization, and that the Church
4 or its minions is fully capable of intimidation or other
5 physical or psychological abuse if it suits their ends. The
6 record is replete with evidence of such abuse.

7 In 1970 a police agency of the French Government conducted
8 an investigation into Scientology and concluded, "this sect,
9 under the pretext of 'freeing humans' is nothing in reality but
10 a vast enterprise to extract the maximum amount of money from
11 its adepts by (use of) pseudo-scientific theories, by (use of)
12 'auditions' and 'stage settings' (lit. to create a theatrical
13 scene') pushed to extremes (a machine to detect lies, its own
14 particular phraseology . . .), to estrange adepts from their
15 families and to exercise a kind of blackmail against persons
16 who do not wish to continue with this sect."² From the
17 evidence presented to this court in 1984, at the very least,
18 similar conclusions can be drawn. In addition to violating and
19 abusing its own members civil rights, the organization over the
20 years with its "Fair Game" doctrine has harassed and abused
21 those persons not in the Church whom it perceives as enemies.
22 The organization clearly is schizophrenic and paranoid, and
23 this bizarre combination seems to be a reflection of its
24 founder LRH. The evidence portrays a man who has been
25 virtually a pathological liar when it comes to his history,
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28 2. Exhibit 500-HHHHH.

background, and achievements. The writings and documents in evidence additionally reflect his egoism, greed, avarice, lust for power, and vindictiveness and aggressiveness against persons perceived by him to be disloyal or hostile. At the same time it appears that he is charismatic and highly capable of motivating, organizing, controlling, manipulating, and inspiring his adherents. He has been referred to during the trial as a "genius," a "revered person," a man who was "viewed by his followers in awe." Obviously, he is and has been a very complex person, and that complexity is further reflected in his alter ego, the Church of Scientology. Notwithstanding protestations to the contrary, this court is satisfied that LRH runs the Church in all ways through the Sea Organization, his role of Commodore, and the Commodore's Messengers.³ He has, of course, chosen to go into "seclusion," but he maintains contact and control through the top messengers. Seclusion has its light and dark side too. It adds to his mystique, and yet shields him from accountability and subpoena or service of summons.

LRH's wife, Mary Sue Hubbard is also a plaintiff herein. On the one hand she certainly appeared to be a pathetic individual. She was forced from her post as Controller, convicted and imprisoned as a felon, and deserted by her husband. On the other hand her credibility leaves much to be desired. She struck the familiar pose of not seeing, hearing,

3. See Exhibit K: Flag Order 3729 - 15 September 1978 "Commodore's Messengers."

1 or knowing any evil. Yet she was the head of the Guardian
2 Office for years and among other things, authored the infamous
3 order "GO 121669"⁴ which directed culling of supposedly
4 confidential P.C. files/folders for purposes of internal
5 security. In her testimony she expressed the feeling that
6 defendant by delivering the documents, writings, letters to his
7 attorneys, subjected her to mental rape. The evidence is clear
8 and the court finds that defendant and Omar Garrison had
9 permission to utilize these documents for the purpose of
10 Garrison's proposed biography. The only other persons who were
11 shown any of the documents were defendant's attorneys, the
12 Douglasses, the Dincalcis, and apparently some documents
13 specifically affecting LRH's son "Nibs," were shown to "Nibs."
14 The Douglasses and Dincalcises were disaffected Scientologists
15 who had a concern for their own safety and mental security, and
16 were much in the same situation as defendant. They had not
17 been declared as suppressive, but Scientology had their P.C.
18 folders, as well as other confessions, and they were extremely
19 apprehensive. They did not see very many of the documents, and
20 it is not entirely clear which they saw. At any rate Mary Sue
21 Hubbard did not appear to be so much distressed by this fact,
22 as by the fact that Armstrong had given the documents to
23 Michael Flynn, whom the Church considered its foremost
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28 4. Exhibit AAA.

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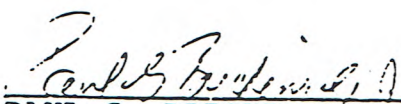
1 lawyer-enemy.⁵ However, just as the plaintiffs have First
2 Amendment rights, the defendant has a Constitutional right to
3 an attorney of his own choosing. In legal contemplation the
4 fact that defendant selected Mr. Flynn rather than some other
5 lawyer cannot by itself be tortious. In determining whether
6 the defendant unreasonably invaded Mrs. Hubbard's privacy, the
7 court is satisfied the invasion was slight, and the reasons and
8 justification for defendant's conduct manifest. Defendant was
9 told by Scientology to get an attorney. He was declared an
10 enemy by the Church. He believed, reasonably, that he was
11 subject to "fair game." The only way he could defend himself,
12 his integrity, and his wife was to take that which was
13 available to him and place it in a safe harbor, to wit, his
14 lawyer's custody. He may have engaged in overkill, in the
15 sense that he took voluminous materials, some of which appear
16 only marginally relevant to his defense. But he was not a
17 lawyer and cannot be held to that precise standard of judgment.
18 Further, at the time that he was accumulating the material, he
19 was terrified and undergoing severe emotional turmoil. The
20 court is satisfied that he did not unreasonably intrude upon
21 Mrs. Hubbard's privacy under the circumstances by in effect
22 simply making his knowledge that of his attorneys. It is, of
23 course, rather ironic that the person who authorized G.O. order
24 121669 should complain about an invasion of privacy. The
25

26 5. "No, I think my emotional distress and upset is the
27 fact that someone took papers and materials without my
28 authorization and then gave them to your Mr. Flynn."
Reporter's Transcript, p. 1006.

1 practice of culling supposedly confidential "P.C. folders or
2 files" to obtain information for purposes of intimidation
3 and/or harassment is repugnant and outrageous. The Guardian's
4 Office, which plaintiff headed, was no respecter of anyone's
5 civil rights, particularly that of privacy. Plaintiff Mary Sue
6 Hubbard's cause of action for conversion must fail for the same
7 reason as plaintiff Church. The documents were all together in
8 Omar Garrison's possession. There was no rational way the
9 defendant could make any distinction.

10 Insofar as the return of documents is concerned, matters
11 which are still under seal may have evidentiary value in the
12 trial of the cross complaint or in other third party
13 litigation. By the time that proceedings on the cross
14 complaint are concluded, the court's present feeling is that
15 those documents or objects not used by that time should be
16 returned to plaintiff. However, the court will reserve
17 jurisdiction to reconsider that should circumstances warrant.

18 Dated: June 10, 1984

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21 PAUL G. BRECKENRIDGE, JR.
22 Judge of the Superior Court
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Appendix

Defendant Armstrong was involved with Scientology from 1969 through 1981, a period spanning 12 years. During that time he was a dedicated and devoted member who revered the founder, L. Ron Hubbard. There was little that Defendant Armstrong would not do for Hubbard or the Organization. He gave up formal education, one-third of his life, money and anything he could give in order to further the goals of Scientology, goals he believed were based upon the truth, honesty, integrity of Hubbard and the Organization.

From 1971 through 1981, Defendant Armstrong was a member of the Sea Organization, a group of highly trained scientologists who were considered the upper echelon of the Scientology organization. During those years he was placed in various locations, but it was never made clear to him exactly which Scientology corporation he was working for. Defendant Armstrong understood that, ultimately, he was working for L. Ron Hubbard, who controlled all Scientology finances, personnel, and operations while Defendant was in the Sea Organization.

Beginning in 1979 Defendant Armstrong resided at Gilman Hot Springs, California, in Hubbard's "Household Unit." The Household Unit took care of the personal wishes and needs of Hubbard at many levels. Defendant Armstrong acted as the L. Ron Hubbard Renovations In-Charge and was responsible for renovations, decoration, and maintenance of Hubbard's home and office at Gilman Hot Springs.

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1 In January of 1980 there was an announcement of a possible
2 raid to be made by the FBI or other law enforcement agencies of
3 the property. Everyone on the property was required by
4 Hubbard's representatives, the Commodore's Messengers, to go
5 through all documents located on the property and "vet" or
6 destroy anything which showed that Hubbard controlled
7 Scientology organizations, retained financial control, or was
8 issuing orders to people at Gilman Hot Springs.

9 A commercial paper shredder was rented and operated day
10 and night for two weeks to destroy hundreds of thousands of
11 pages of documents.

12 During the period of shredding, Brenda Black, the
13 individual responsible for storage of Hubbard's personal
14 belongings at Gilman Hot Springs, came to Defendant Armstrong
15 with a box of documents and asked whether they were to be
16 shredded. Defendant Armstrong reviewed the documents and found
17 that they consisted of a wide variety of documents including
18 Hubbard's personal papers, diaries, and other writings from a
19 time before he started Dianetics in 1950, together with
20 documents belonging to third persons which had apparently been
21 stolen by Hubbard or his agents. Defendant Armstrong took the
22 documents from Ms. Black and placed them in a safe location on
23 the property. He then searched for and located another twenty
24 or more boxes containing similar materials, which were poorly
25 maintained.

26 On January 8, 1980, Defendant Armstrong wrote a petition
27 to Hubbard requesting his permission to perform the research
28 for a biography to be done about his life. The petition states

1 that Defendant Armstrong had located the subject materials and
2 lists of a number of activities he wished to perform in
3 connection with the biography research.

4 Hubbard approved the petition, and Defendant Armstrong
5 became the L. Ron Hubbard Personal Relations Officer Researcher
6 (PPRO Res). Defendant claims that this petition and its
7 approval forms the basis for a contract between Defendant and
8 Hubbard. Defendant Armstrong's supervisor was then Laurel
9 Sullivan, L. Ron Hubbard's Personal Public Relations Officer.

10 During the first part of 1980, Defendant Armstrong moved
11 all of the L. Ron Hubbard Archives materials he had located at
12 Gilman Hot Springs to an office in the Church of Scientology
13 Cedars Complex in Los Angeles. These materials comprised
14 approximately six file cabinets. Defendant Armstrong had
15 located himself in the Cedars Complex, because he was also
16 involved in "Mission Corporate Category Sort-Out," a mission to
17 work out legal strategy. Defendant Armstrong was involved with
18 this mission until June of 1980.

19 It was also during this early part of 1980 that Hubbard
20 left the location in Gilman Hot Springs, California, and went
21 into hiding. Although Defendant Armstrong was advised by
22 Laurel Sullivan that no one could communicate with Hubbard,
23 Defendant Armstrong knew that the ability for communication
24 existed, because he had forwarded materials to Hubbard at his
25 request in mid-1980.

26 Because of this purported inability to communicate with
27 Hubbard, Defendant Armstrong's request to purchase biographical
28 materials of Hubbard from people who offered them for sale went

1 to the Commodore's Messenger Organization, the personal
2 representatives of Hubbard.

3 In June of 1980 Defendant Armstrong became involved in the
4 selection of a writer for the Hubbard biography. Defendant
5 Armstrong learned that Hubbard had approved of a biography
6 proposal prepared by Omar Garrison, a writer who was not a
7 member of Scientology. Defendant Armstrong had meetings with
8 Mr. Garrison regarding the writing of the biography and what
9 documentation and assistance would be made available to him.
10 As understood by Mr. Garrison, Defendant Armstrong represented
11 Hubbard in these discussions.

12 Mr. Garrison was advised that the research material he
13 would have at his disposal were Hubbard's personal archives.
14 Mr. Garrison would only undertake a writing of the biography if
15 the materials provided to him were from Hubbard's personal
16 archives, and only if his manuscript was subject to the
17 approval of Hubbard himself.

18 In October of 1980 Mr. Garrison came to Los Angeles and
19 was toured through the Hubbard archives materials that
20 Defendant Armstrong had assembled up to that time. This was an
21 important "selling point" in obtaining Mr. Garrison's agreement
22 to write the biography. On October 30, 1980, an agreement was
23 entered into between Ralston-Pilot, ncv. F/S/O Omar V.
24 Garrison, and AOSH DK Publications of Copenhagen, Denmark, for
25 the writing of a biography of Hubbard.

26 Paragraph 10B of the agreement states that:

27 "Publisher shall use its best efforts to provide
28 Author with an office, an officer assistant and/or

research assistant, office supplies and any needed archival and interview materials in connection with the writing of the Work."

The "research assistant" provided to Mr. Garrison was Defendant Armstrong.

During 1980 Defendant Armstrong exchanged correspondence with Intervenor regarding the biography project. Following his approval by Hubbard as biography researcher, Defendant Armstrong wrote to Intervenor on February 5, 1980, advising her of the scope of the project. In the letter Defendant stated that he had found documents which included Hubbard's diary from his Orient trip, poems, essays from his youth, and several personal letters, as well as other things.

By letter of February 11, 1980, Intervenor responded to Defendant, acknowledging that he would be carrying out the duties of Biography Researcher.

On October 14, 1980, Defendant Armstrong again wrote to Intervenor, updating her on "Archives materials" and proposing certain guidelines for the handling of those materials.

It was Intervenor who, in early 1981, ordered certain biographical materials from "Controller Archives" to be delivered to Defendant Armstrong. These materials consisted of several letters written by Hubbard in the 1920's and 1930's, Hubbard's Boy Scout books and materials, several old Hubbard family photographs, a diary kept by Hubbard in his youth, and several other items.

Defendant Armstrong received these materials upon the order of Intervenor, following his letter of October 15, 1980,

1 to her in which Defendant stated, at page 7, that there were
2 materials in the "Controller Archives" that would be helpful to
3 him in the biography research.

4 After these materials were delivered to Defendant
5 Armstrong, Intervenor was removed from her Scientology position
6 of Controller in 1981, presumably because of her conviction for
7 the felony of obstruction of justice in connection with the
8 theft of Scientology documents from various government offices
9 and agencies in Washington, D.C.

10 During the time Defendant Armstrong worked on the
11 biography project and acted as Hubbard Archivist, there was
12 never any mention that he was not to be dealing with Hubbard's
13 personal documents or that the delivery of those documents to
14 Mr. Garrison was not authorized.

15 For the first year or more of the Hubbard biography and
16 archive project, funding came from Hubbard's personal staff
17 unit at Gilman Hot Springs, California. In early 1981,
18 however, Defendant Armstrong's supervisor, Laurel Sullivan,
19 ordered him to request that funding come from what was known as
20 SEA Org Reserves. Approval for this change in funding came
21 from the SEA Org Reserves Chief and Watch Dog Committee, the
22 top Commodores Messenger Organization unit, who were Hubbard's
23 personal representatives.

24 From November of 1980 through 1981, Defendant Armstrong
25 worked closely with Mr. Garrison, assembling Hubbard's archives
26 into logical categories, copying them and arranging the copies
27 of the Archives materials into bound volumes. Defendant
28 Armstrong made two copies of almost all documents copied for

1 Mr. Garrison - one for Mr. Garrison and the other to remain in
2 Hubbard Archives for reference or recopying. Defendant
3 Armstrong created approximately 400 binders of documents. The
4 vast majority of the documents for Mr. Garrison came from
5 Hubbard's personal Archives, of which Defendant Armstrong was
6 in charge. Materials which came from other Archives, such as
7 the Controller Archives, were provided to Defendant Armstrong
8 by Scientology staff members who had these documents in their
9 care.

10 It was not until late 1981 that Plaintiff was to provide a
11 person to assist on the biography project by providing Mr.
12 Garrison with "Guardian Office" materials, otherwise described
13 as technical materials relating to the operation of
14 Scientology. The individual appointed for this task was Vaughn
15 Young. Controller Archives and Guardian Office Archives had no
16 connection to the Hubbard Archives, which Defendant Armstrong
17 created and maintained as Hubbard's personal materials.

18 In addition to the assemblage of Hubbard's Archives,
19 Defendant Armstrong worked continually on researching and
20 assembling materials concerning Hubbard by interviewing dozens
21 of individuals, including Hubbard's living aunt, uncle, and
22 four cousins. Defendant Armstrong did a geneology study of
23 Hubbard's family and collected, assembled, and read hundreds of
24 thousands of pages of documentation in Hubbard's Archives.

25 During 1980 Defendant Armstrong remained convinced of
26 Hubbard's honesty and integrity and believed that the
27 representations he had made about himself in various
28 publications were truthful. Defendant Armstrong was devoted to

1 Hubbard and was convinced that any information which he
2 discovered to be unflattering of Hubbard or contradictory to
3 what Hubbard has said about himself, was a lie being spread by
4 Hubbard's enemies. Even when Defendant Armstrong located
5 documents in Hubbard's Archives which indicated that
6 representations made by Hubbard and the Organization were
7 untrue, Defendant Armstrong would find some means to "explain
8 away" the contradictory information.

9 Slowly, however, throughout 1981, Defendant Armstrong
10 began to see that Hubbard and the Organization had continuously
11 lied about Hubbard's past, his credentials, and his
12 accomplishments. Defendant Armstrong believed, in good faith,
13 that the only means by which Scientology could succeed in what
14 Defendant Armstrong believed was its goal of creating an
15 ethical environment on earth, and the only way Hubbard could be
16 free of his critics, would be for Hubbard and the Organization
17 to discontinue the lies about Hubbard's past, his credentials,
18 and accomplishments. Defendant Armstrong resisted any public
19 relations piece or announcement about Hubbard which the L. Ron
20 Hubbard Public Relations Bureau proposed for publication which
21 was not factual. Defendant Armstrong attempted to change and
22 make accurate the various "about the author" sections in
23 Scientology books, and further, Defendant rewrote or critiqued
24 several of these and other publications for the L. Ron Hubbard
25 Public Relations Bureau and various Scientology Organizations.
26 Defendant Armstrong believed and desired that the Scientology
27 Organization and its leader discontinue the perpetration of the

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1 massive fraud upon the innocent followers of Scientology, and
2 the public at large.

3 Because of Defendant Armstrong's actions, in late November
4 of 1981, Defendant was requested to come to Gilman Hot Springs
5 by Commodore Messenger Organization Executive, Cirrus Slevin.
6 Defendant Armstrong was ordered to undergo a "security check,"
7 which involved Defendant Armstrong's interrogation while
8 connected to a crude Scientology lie detector machine called an
9 E-meter.

10 The Organization wished to determine what materials
11 Defendant Armstrong had provided to Omar Garrison. Defendant
12 Armstrong was struck by the realization that the Organization
13 would not work with him to correct the numerous fraudulent
14 representations made to followers of Scientology and the public
15 about L. Ron Hubbard and the Organization itself. Defendant
16 Armstrong, who, for twelve years of his life, had placed his
17 complete and full trust in Mr. and Mrs. Hubbard and the
18 Scientology Organization, saw that his trust had no meaning and
19 that the massive frauds perpetrated about Hubbard's past,
20 credentials, and accomplishments would continue to be spread.

21 Less than three weeks before Defendant Armstrong left
22 Scientology, he wrote a letter to Cirrus Slevin on November 25,
23 1981, in which it is clear that his intentions in airing the
24 inaccuracies, falsehoods, and frauds regarding Hubbard were
25 done in good faith. In his letter he stated as follows:

26 "If we present inaccuracies, hyperbole
27 or downright lies as fact or truth, it
28 doesn't matter what slant we give them, if

1 disproved the man will look, to outsiders
2 at least, like a charlatan. This is what
3 I'm trying to prevent and what I've been
4 working on the past year and a half.

5 . . .

6 "and that is why I said to Norman that
7 it is up to us to insure that everything
8 which goes out about LRH is one hundred
9 percent accurate. That is not to say that
10 opinions can't be voiced, they can. And
11 they can contain all the hype you want.
12 But they should not be construed as facts.
13 And anything stated as a fact should be
14 documentable.

15 "we are in a period when
16 'investigative reporting' is popular, and
17 when there is relatively easy access to
18 documentation on a person. We can't delude
19 ourselves I believe, if we want to gain
20 public acceptance and cause some betterment
21 in society, that we can get away with
22 statements, the validity of which we don't
23 know.

24 "The real disservice to LRH, and the
25 ultimate make-wrong is to go on assuming
26 that everything he's ever written or said
27 is one hundred percent accurate and publish
28 it as such without verifying it. I'm

1 talking here about biographical or
2 non-technical writings. This only leads,
3 should any of his statements turn out to be
4 inaccurate, to a make-wrong of him, and
5 consequently his technology.

6 "That's what I'm trying to remedy and
7 prevent.

8 . . .

9 "To say that LRH is not capable of
10 hype, errors or lies is certainly ^sic; not
11 granting him much of a beingness. To
12 continue on with the line that he has never
13 erred nor lied is counterproductive. It is
14 an unreal attitude and too far removed from
15 both the reality and people in general that
16 it would widen public unacceptance.

17 . . .

18 ". . . That is why I feel the
19 falsities must be corrected, and why we
20 must verify our facts and present them in a
21 favorable light."

22
23 The remainder of the letter contains examples of facts
24 about Hubbard which Defendant Armstrong found to be wholly
25 untrue or inaccurate and which were represented as true by the
26 Hubbards and the Scientology Organization.

27 In December of 1981 Defendant Armstrong made the decision
28 to leave the Church of Scientology. In order to continue in

1 his commitment to Hubbard and Mr. Garrison in the biography
2 project, he copied a large quantity of documents, which Mr.
3 Garrison had requested or which would be useful to him for the
4 biography. Defendant Armstrong delivered all of this material
5 to Mr. Garrison the date he left the SEA Organization and kept
6 nothing in his possession.

7 Thereafter, Defendant Armstrong maintained friendly
8 relations with Hubbard's representatives by returning to the
9 Archives office and discussing the various categories of
10 materials. In fact on February 24, 1982, Defendant Armstrong
11 wrote to Vaughn Young, regarding certain materials Mr. Young
12 was unable to locate for Omar Garrison.

13 After this letter was written, Defendant Armstrong went to
14 the Archives office and located certain materials Mr. Garrison
15 had wanted which Hubbard representatives claimed they could not
16 locate.

17 At the time Defendant Armstrong left the SEA Organization,
18 he was disappointed with Scientology and Hubbard, and also felt
19 deceived by them. However, Defendant Armstrong felt he had no
20 enemies and felt no ill will toward anyone in the Organization
21 or Hubbard, but still believed that a truthful biography should
22 be written.

23 After leaving the SEA Organization, Defendant ARMstrong
24 continued to assist Mr. Garrison with the Hubbard biography
25 project. In the spring of 1982, Defendant Armstrong at Mr.
26 Garrison's request, transcribed some of his interview tapes,
27 copied some of the documentation he had, and assembled several
28 more binders of copied materials. Defendant Armstrong also set

up shelves for Mr. Garrison for all the biography research materials, worked on a cross-reference systems, and continued to do library research for the biography.

On February 18, 1982, the Church of Scientology International issued a "Suppressive Person Declare Gerry Armstrong," which is an official Scientology document issued against individuals who are considered as enemies of the Organization. Said Suppressive Person Declare charged that Defendant Armstrong had taken an unauthorized leave and that he was spreading destructive rumors about Senior Scientologists.

Defendant Armstrong was unaware of said Suppressive Person Declare until April of 1982. At that time a revised Declare was issued on April 22, 1982. Said Declare charged Defendant Armstrong with 18 different "Crimes and High Crimes and Suppressive Acts Against the Church." The charges included theft, juggling accounts, obtaining loans on money under false pretenses, promulgating false information about the Church, its founder, and members, and other untruthful allegations designed to make Defendant Armstrong an appropriate subject of the Scientology "Fair Game Doctrine." Said Doctrine allows any suppressive person to be "tricked, cheated, lied to, sued, or destroyed."

The second declare was issued shortly after Defendant Armstrong attempted to sell photographs of his wedding on board Hubbard's ship (in which Hubbard appears), and photographs belonging to some of his friends, which also included photos of L.R. Hubbard while in seclusion. Although Defendant Armstrong delivered the photographs to a Virgil Wilhite for sale, he

1 never received payment or return of his friend's photographs.
2 When he became aware that the Church had these photographs, he
3 went to the Organization to request their return. A loud and
4 boisterous argument ensued, and he eventually was told to leave
5 the premises and get an attorney.

6 From his extensive knowledge of the covert and
7 intelligence operations carried out by the Church of
8 Scientology of California against its enemies (suppressive
9 persons), Defendant Armstrong became terrified and feared that
10 his life and the life of his wife were in danger, and he also
11 feared he would be the target of costly and harassing lawsuits.
12 In addition, Mr. Garrison became afraid for the security of the
13 documents and believed that the intelligence network of the
14 Church of Scientology would break and enter his home to
15 retrieve them. Thus, Defendant Armstrong made copies of
16 certain documents for Mr. Garrison and maintained them in a
17 separate location.

18 It was thereafter, in the summer of 1982, that Defendant
19 Armstrong asked Mr. Garrison for copies of documents to use in
20 his defense and sent the documents to his attorneys, Michael
21 Flynn and Contos & Bunch.

22 After the within suit was filed on August 2, 1982,
23 Defendant Armstrong was the subject of harassment, including
24 being followed and surveilled by individuals who admitted
25 employment by Plaintiff; being assaulted by one of these
26 individuals; being struck bodily by a car driven by one of
27 these individuals; having two attempts made by said individuals
28 apparently to involve Defendant Armstrong in a freeway

1 automobile accident; having said individuals come onto
2 Defendant Armstrong's property, spy in his windows, create
3 disturbances, and upset his neighbors. During trial when it
4 appeared that Howard Schomer (a former Scientologist) might be
5 called as a defense witness, the Church engaged in a somewhat
6 sophisticated effort to suppress his testimony. It is not
7 clear how the Church became aware of defense intentions to call
8 Mr. Schomer as a witness, but it is abundantly clear they
9 sought to entice him back into the fold and prevent his
10 testimony.
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Attorney(s) for

FILED

JUN 22 1984

John J. Corcoran,

Rosie M. Hart
BY ROSIE M. HART, DEPUTY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

CHURCH OF SCIENTOLOGY OF
CALIFORNIA,

VS

GERALD ARMSTRONG,

PLAINTIFF(S)

DEFENDANT(S)

CASE NUMBER

C 420 153

CERTIFICATE OF MAILING
OF COPY OF COURT'S INTENDED DECISION
(Rule 232(a) California Rules of Court)

I, JOHN J. CORCORAN, County Clerk and Clerk of the Superior Court of the State of California for the County of Los Angeles, and not a party to the action, hereby certify that on June 20, 1984, ~~XX~~
I mailed copies of the court's intended decision in the within action to all parties who appeared at the trial by depositing

☐ true copies of the minute order of _____, 19____, Department _____ of the
Superior Court of the State of California, County of Los Angeles.

Memorandum

☒ true copies of the written ~~statement~~ of intended decision filed herein June 22, 19 84.

☐ true copies of the memorandum of decision filed by the court on _____, 19____.

enclosed in sealed envelopes with postage thereon fully prepaid in the United States Post Office mail box
at Los Angeles, _____, California, addressed as follows:

SEE ATTACHED EXHIBIT "A"

Dated: June 22, 1984

JOHN J. CORCORAN, County Clerk and Clerk
of the Superior Court of the State of California,
County of Los Angeles,

By

Rosie M. Hart
ROSIE M. HART

Deputy

EXHIBIT "A"

Peterson and Brynan
John G. Peterson, Esq.
8530 Wilshire Blvd., Ste 407
Beverly Hills, Ca. 90211

AND

Robert N. Harris, Esq.
617 South Olive Street, Ste. 915
Los Angeles, Ca. 90014

Attorneys for Plaintiff

The Law Offices of Litt & Stormer
Barrett S. Litt, Esq.
3550 Wilshire Blvd., Ste. 1200
Los Angeles, Ca. 90010

Attorneys for Intervenor

Michael J. Flynn, Esq.
12 Union Wharf
Boston, Massachusetts 02109

AND

Contos & Bunch
Julia Dragojevic, Esq.
5855 Topanga Canyon Blvd., Ste 400
Woodland Hills, Ca. 91367-4694

Attorneys for Defendant

Attorneys for Defendant GERALD ARMSTRONG

JUL 17 1934

John J. Corcoran,

Rosie M. Hart
BY ROSIE M. HART, DEPUTY

CASE NUMBER: C 420153

REQUEST OF DEFENDANT GERALD
ARMSTRONG THAT MEMORANDUM OF
INTENDED DECISION BE DEEMED
STATEMENT OF DECISION

Defendants.

Intervenor.


Defendant Gerald Armstrong hereby requests the Court to order that the Memorandum of Intended Decision filed

///

1 on June 22, 1984, following trial of the within action, be
2 deemed the Court's Statement of Decision.

3
4 DATED: July 17, 1984

5 CONTOS & BUNCH

6
7 By: 
8 JULIA DRAGOJEVIC
9 Attorneys for Defendant
10 GERALD ARMSTRONG

11
12
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21
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28 JD8:8

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is 5855 Topanga Canyon Boulevard, Suite 400, Woodland Hills, California, 91367.

On July 17 1984, I served the within

REQUEST OF DEFENDANT GERALD ARMSTRONG THAT MEMORANDUM
OF INTENDED DECISION BE DEEMED STATEMENT OF DECISION.

on the parties in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Woodland Hills, California, addressed as follows:

Barrett S. Litt, Esq.
LITT & STORMER
Paramount Plaza
3500 Wilshire Boulevard
Suite 1200
Los Angeles, CA 90010

John G. Peterson, Esq.
PETERSON & BRYNAN
8530 Wilshire Boulevard
Suite 407
Beverly Hills, CA 90211

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 17 1984, at Woodland Hills, California.


Cheryl Crosland

000498

Deputy Sheriff

R. D. [unclear]
NONE

, Deputy Clerk
, Reporter

(Parties and counsel checked if present)

7. J. ANDERSON, COURT ATTENDANT

C 420 153
CHURCH OF SCIENTOLOGY OF
CALIFORNIA,
VS
GERALD ARMSTRONG,

Counsel for
Plaintiff

Counsel for
Defendant

MARY SUE HUBBARD - INTERVENOR

NATURE OF PROCEEDINGS:

TRIAL (NJ) CIVIL AO X-COMPLAINT SEVERED
(SUBMITTED MATTER)

In this matter heretofore taken under submission on June 8, 1984, the Court renders its intended decision as set forth in the Memorandum of Intended Decision dated June 20, 1984 and filed this date; said decision is incorporated herein by reference to the court file.

Counsel for defendant is ordered to prepare, serve and file a Judgment on the complaint and the complaint in Intervention in accordance with the Court's Memorandum of Intended Decision; and Statement of Decision, if timely and properly requested.

A copy of the Court's Memorandum of Intended Decision was mailed to all counsel on June 20, 1984.

Clerk's Certificate of Mailing is executed and filed this date.

(7)

DEPT. 57

MINUTES ENTERED

6-22-84

COUNTY CLERK

Date JULY 20, 1984

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

HONORABLE P G BRECKENRIDGE, JR JUDGE

R HART

, Deputy Clerk

NONE

, Reporter

J ANDERSON, COURT ATTENDANT

(Parties and counsel checked if present)

C 420 153

CHURCH OF SCIENTOLOGY OF
CALIFORNIA,Counsel for
Plaintiff

VS

GERALD ARMSTRONG,

Counsel for
Defendant

MARY SUE HIBBARD - INTERVENOR

NATURE OF PROCEEDINGS: REQUEST OF DEFENDANT THAT MEMORANDUM BE DEEMED
STATEMENT OF DECISION

Plaintiffs not having requested such, the Court grants defendant's motion, and the Memorandum of Intended Decision will henceforth be deemed the Court's "Statement of Decision".

A copy of this minute order is mailed to all counsel.

(1)

DEPT. 57

MINUTES ENTERED

7-20-84

COUNTY CLERK

000501

ORIGINAL FILED

JUL 18 1991

COUNTY CLERK

1 John J. Quinn
QUINN, KULLY AND MORROW
2 520 S. Grand Ave., 8th Floor
Los Angeles, CA 90071
3 (213) 622-0300

4 Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY INTERNATIONAL

5 William T. Drescher
6 23679 Calabasas Road, Suite 338
Calabasas, CA 91302
7 (818) 591-0039

8 Attorney for Plaintiff
RELIGIOUS TECHNOLOGY CENTER

9 Laurie J. Bartilson
10 Helena K. Kobrin
BOWLES & MOXON
11 6255 Sunset Blvd., Suite 2000
Los Angeles, CA 90028
12 (213) 661-4030

13 Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY OF CALIFORNIA

BC032035

BC032035

16 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
17 COUNTY OF LOS ANGELES
18

19 RELIGIOUS TECHNOLOGY CENTER,
A California Non-Profit Religious
20 Corporation; CHURCH OF SCIENTOLOGY
INTERNATIONAL, a California
21 Non-Profit Religious Corporation;
and CHURCH OF SCIENTOLOGY OF
22 CALIFORNIA, a California
Non-Profit Religious Corporation,
23
Plaintiffs,

24 vs.

25 JOSEPH A. YANNY, an individual;
26 JOSEPH A. YANNY, a professional Law
Corporation and DOES 1 THROUGH 25
27 inclusive,

28 Defendants.

NO.

VERIFIED COMPLAINT FOR
DAMAGES AND FOR
TEMPORARY, PRELIMINARY
AND PERMANENT
INJUNCTIVE RELIEF FOR
BREACH OF FIDUCIARY
DUTY

000502

1 Plaintiff RELIGIOUS TECHNOLOGY CENTER, CHURCH OF
2 SCIENTOLOGY INTERNATIONAL and CHURCH OF SCIENTOLOGY OF
3 CALIFORNIA, for their Verified Complaint against defendants,
4 JOSEPH A. YANNY and JOSEPH A. YANNY, A PROFESSIONAL LAW
5 CORPORATION, allege as follows:

6 1. This action arises from direct, overt, and intention
7 breaches by defendants of the perpetual duties of loyalty and
8 confidentiality which a member of the Bar of the State of
9 California owes as fiduciary obligations to his former client
10 since entry of judgment in Religious Technology Center, et al
11 v. Joseph A. Yanny, et al., Los Angeles Superior Court Case
12 No. C 690 211, on February 28, 1991, defendants have flagrant
13 violated those fiduciary duties by openly assuming
14 representation, as counsel of record and otherwise, of client
15 in legal matters in a manner that directly contravenes
16 plaintiffs' statutory rights. By this action, plaintiffs seek
17 to enjoin their former counsel from committing further
18 breaches of his ongoing fiduciary duties and to obtain damage
19 for those breaches which he has committed, as is further alleged
20 with particularity herein.

21 THE PARTIES

22 2. Plaintiff RELIGIOUS TECHNOLOGY CENTER ("RTC") is, at
23 at all relevant times was, a not-for-profit religious
24 corporation organized and existing under the laws of the State
25 of California with its principal office in Los Angeles,
26 California.

27 3. Plaintiff CHURCH OF SCIENTOLOGY INTERNATIONAL ("CSI")
28 is, and at all relevant times was, a California not-for-profit

1 religious corporation organized and existing under the laws of
2 the State of California with its principal office in Los
3 Angeles, California.

4 4. Plaintiff CHURCH OF SCIENTOLOGY OF CALIFORNIA ("CSC")
5 is, and at all relevant times was, a California not-for-profit
6 religious corporation organized and existing under the laws
7 of the State of California with its principal office in Los
8 Angeles, California.

9 5. Defendant JOSEPH A. YANNY is, and at all relevant
10 times was, an attorney licensed to practice law in the State
11 California. Yanny is a resident of Hermosa Beach, California

12 6. Defendant JOSEPH A. YANNY, A PROFESSIONAL LAW
13 CORPORATION is, and at all relevant times was, a professional
14 corporation organized and existing under the laws of the State
15 of California, with its principal office in Los Angeles,
16 California. Defendants JOSEPH A. YANNY and JOSEPH A. YANNY,
17 PROFESSIONAL LAW CORPORATION, shall hereinafter be referred to
18 collectively as "Yanny."

19 7. Plaintiffs are ignorant of the names and capacities
20 the defendants identified as DOES 1 through 25, inclusive, and
21 thus brings suit against those defendants by those fictitious
22 names. Plaintiffs will seek leave of Court to amend this
23 Complaint to include those defendants by their true names upon
24 the ascertainment of their true names and capacities, and the
25 responsibility for the conduct alleged herein.

26 DEFENDANTS' HISTORY AS PLAINTIFFS' COUNSEL

27 8. Yanny formerly represented and appeared as counsel in
28 record for the plaintiffs in a number of litigation matters,

1 including, Religious Technology Center, et al. v. Scott,
2 et al. and Religious Technology Center, et al. v.
3 Wollersheim, et al., (United States District Court for the
4 Central District of California, Civil Action Nos. 85-711 and
5 85-7197 JMI(BX)) (hereinafter "RTC v. Scott"); Church of
6 Scientology International, et al. v. The Elmira Mission of
7 the Church of Scientology, et al., (United States District
8 Court for the Western District of New York, Civil Action No.
9 85-0412(T), and United States Court of Appeals for the Second
10 Circuit No., 85-7693); Church of Scientology of California
11 v. David Jordan, et al., Superior Court of the State of
12 California for the County of Los Angeles, No. C 538 049; and
13 Clay Eberle, et al. v. Church of Scientology of
14 California, Superior Court of the State of California for the
15 County of Los Angeles, No. NCC 16648G.

16 9. Yanny represented RTC, CSI and CSC, as their attorney
17 extensively often approaching a full-time basis, for
18 approximately four years, between 1983 and 1987.

19 Indeed, Yanny has testified under oath to the extensive
20 in-depth character of the responsibilities he assumed as legal
21 counsel for plaintiffs, characterizing his various duties and
22 responsibilities as follows:

23 (a) "[T]o control and oversee all of the litigation that
24 involved Scientology any place in the world ..."

25 (b) "I also oversaw the administrative side, what they call
26 the transactional side of their legal business where they enter
27 agreements with franchises or mission holders, depending on
28 where they were located;"

000505

1 (c) oversaw prosecution of trademark applications all
2 over the world, United States, foreign countries. I reviewed
3 all of those things;

4 (d) "I was also to, if there were any flaps, as they were
5 called, any problems that arose, I was usually broached on what
6 the problem was, what was expected, and asked for solutions to
7 those types of things ..."

8 10. Throughout his legal representation of plaintiffs,
9 Yanny was regularly called upon by his clients to provide
10 advice, counsel, assistance, and judgment as a lawyer with
11 respect to litigation, transactional, and intellectual property
12 matters irrespective of whether he actually appeared as counsel
13 of record in such matters. As such, and throughout his tenure
14 as plaintiff's lawyer, Yanny was privy to and called upon to
15 provide, and did provide legal services to plaintiffs on
16 essentially all of plaintiffs' legal matters for nearly four
17 years. In exchange for the legal services so rendered, as set
18 forth in this and in the preceding paragraph of this Complaint
19 Yanny was compensated at an hourly rate, ultimately in a
20 cumulative amount in excess of \$2 million.

21 11. Upon entering into this attorney-client relationship
22 with plaintiffs, Yanny assumed all of the fiduciary and ethical
23 obligations that are component parts of any attorney-client
24 relationship, including, without limitation, the duties of
25 loyalty, diligence, fidelity, honesty, and confidentiality.
26 Those obligations, by operation of statute, rule and common law
27 embrace the following fiduciary duties, which represent a
28 selective, rather than all-inclusive list:

1 (a) to accept no employment adverse to plaintiffs'
2 interests in matters substantially related to his
3 representation of plaintiffs, either during or after the peri-
4 of the parties' actual attorney-client relationship; and
5 (b) to keep all communications and information provided
6 plaintiffs or by plaintiffs' agents and employees in the caus
7 of the representation inviolate and confidential, both during
8 and after the period of the parties' actual attorney-client
9 relationship.

10 12. During the course of Yanny's legal representation o
11 plaintiffs, and in reliance upon the fiduciary obligations of
12 fidelity, loyalty, and confidentiality inherent in the
13 attorney-client relationship, plaintiffs divulged
14 extensive strategic, confidential, and proprietary informatio
15 to Yanny in the course of seeking and receiving legal advice
16 from Yanny. Information so divulged included, but was not
17 limited to, offensive and defensive legal strategies and
18 approaches to various and recurring legal claims; non-public,
19 financial information; confidential religious and scriptural
20 information, and various other confidential and proprietary
21 information that plaintiffs divulged to Yanny so that he coul
22 perform competently as plaintiffs' legal counsel in the many
23 legal areas for which he had responsibility.

24 13. Yanny represented RTC, CSI, and CSC in several
25 lawsuits brought by former Scientologists in which those pers
26 sought recovery from plaintiffs or some of them upon theories
27 fraud and intentional infliction of emotional distress. Yann
28 was: (a) closely involved in the formulation and refinement o

1 legal strategies employed by plaintiffs to defendant against
2 such baseless claims; and b) routinely involved in, and called
3 upon to develop solutions for various legal issues, at
4 periodical attorney-client conferences in which counsel
5 representing Scientology churches discussed pending litigation;
6 legal strategies and the strengths and potential weaknesses of
7 the Scientology position in the various matters.

8 14. The attorney-client relationship between plaintiffs
9 and Yanny was terminated in or about December, 1987, although
10 by his failure to execute the appropriate Judicial Council
11 forms, Yanny remained counsel of record for CSC in two cases
12 thereafter.

13 15. Since on or about June 28, 1991, Yanny has appeared
14 as counsel of record for Vicki and Richard Aznaran in an action
15 being prosecuted by the Aznarans against RTC, CSI and others,
16 entitled, Vicki Aznaran et al vs. Church of Scientology of
17 California, and assigned case number C 88-1786 JMI (Ex) by the
18 United States District Court for the Central District of
19 California ("the Aznaran case."). During the pendency of an
20 earlier action in this Court entitled Religious Technology
21 Center et al. v. Joseph A. Yanny et al., case number C 690
22 211 ("Yanny 1"), Yanny was enjoined pendente lite from
23 representing or providing legal counsel to the Aznarans in the
24 Aznaran case. That provisional relief was lifted upon entry of
25 final judgment by this Court in Yanny 1 on February 28, 1991.
26 Like a number of substantially similar cases described in the
27 preceding paragraph of this Complaint, the Aznaran case is one
28 in which ex-Scientologists have sued these plaintiffs upon

1 theories of fraud and emotional distress. A motion to
2 disqualify Yanny from representing the Aznarans in the Aznaran
3 case is presently pending in that case.

4 16. During the time in which Yanny was plaintiff's
5 counsel, plaintiffs were actively engaged in litigation in the
6 matter of Church of Scientology of California v. Gerald
7 Armstrong, Los Angeles Superior Court Case Number C 420 153,
8 California Court of Appeal Case Number B 038 975.

9 Yanny's legal advice and counsel were sought and obtained
10 by plaintiffs with respect to Gerald Armstrong, including the
11 Armstrong case, settlement negotiations relating to it, parties
12 settlement thereof, and the appeal therefrom. Yanny also was
13 fully briefed upon, and his legal advice was sought and
14 obtained by plaintiffs concerning the ongoing disputes between
15 Armstrong and plaintiffs and the strategies to be employed by
16 plaintiffs in dealing with those disputes. On July 15, 1991,
17 Yanny and Armstrong informed a partner of the law firm
18 representing CSC in this action that Yanny was now Armstrong's
19 lawyer.

20 FIRST CAUSE OF ACTION

21 (Against all Defendants for Breach of Fiduciary Duty)---

22 17. RTC, CSI and CSC repeat, reallege and incorporate
23 herein by this reference each and every allegation contained in
24 paragraphs 1 through 16, inclusive, of this complaint.

25 18. On April 1, 1988, Vicki Aznaran, the former president
26 of RTC, and her husband, Richard Aznaran, a former employee of

27 ///

28 ///

000509

1 CSI, filed the Aznaran case, in which they seek damages from
2 plaintiffs upon theories that include fraud and emotional
3 distress. The Aznaran case raises many issues which are
4 substantially related to matters concerning which Yanny
5 represented plaintiffs, in particular, but without
6 limitation, the counterclaims against RTC, CSI and CSC in
7 RTC v. Scott, in which Yanny served as lead counsel for
8 plaintiffs.

9 19. The Aznaran case was initially filed on the
10 Aznarans' behalf by Barry Van Sickle, an attorney whom Yanny
11 located for the Aznarans and who also represented Yanny in
12 Yanny 1 in this Court. Mr. Van Sickle was disqualified by th
13 Court in the Aznaran case because he was "an extension of
14 Joseph Yanny's continuing involvement in [the Aznaran case],"
15 which the Court found to be improper. The Aznarans then
16 employed another counsel to represent them in that case until
17 June, 1991, when they discharged him.

18 20. On Friday, June 28, 1991, counsel for CSI, John J.
19 Quinn, received a telephone call from Yanny. In that call,
20 Yanny stated that he intended to substitute into the Aznaran
21 case as counsel for the Aznarans, and requested that Mr. Quir
22 agree to an extension of "45 to 60 days" to oppose a pending
23 summary judgment motion. Mr. Quinn informed Yanny that he
24 considered Yanny's proposed representation of the Aznarans to
25 outrageous and improper, and informed Yanny that he would
26 consult with his client and with co-counsel before agreeing
27 anything.

28 21. When, on Monday, July 1, 1991, Mr. Quinn informed

1 Yanny that he still considered Yanny's proposed representation
2 unethical, and that neither he nor any or these plaintiffs would
3 agree to any such extension to permit Yanny to come into the
4 case, Yanny informed Mr. Quinn that he had already requested
5 and obtained the Aznaran Court's permission to represent the
6 Aznarans on an ex parte basis, without notice to any of the
7 opposing parties.

8 On July 2, 1991, Mr. Quinn checked with the clerk of the
9 Aznaran Court and found that the Court apparently signed
10 Yanny's substitution on or about June 28, 1991.

11 22. Counsel for RTC and CSI in that case promptly
12 prepared and, on July 3, 1991, filed, a motion to disqualify
13 Joseph Yanny from representing the Aznarans in the Aznaran
14 case. That motion is now pending.

15 23. While that motion to disqualify has been pending,
16 Yanny has filed several papers in the Aznaran case on behalf
17 of the Aznarans, made overtures to counsel for RTC, CSI, Church
18 of Spiritual Technology ("CST") and Author Services, Inc.
19 ("ASI") indicating a desire to discuss settlement on behalf of
20 the Aznarans, and otherwise conducted himself as the Aznarans'
21 counsel both of record and in fact.

22 24. As an attorney with a long-term, broad ranging
23 professional relationship with RTC, CSI, and CSC, Yanny owes a
24 fiduciary duty to RTC, CSI, and CSC that persists beyond the
25 termination of that relationship, in the same manner that all
26 attorneys owe such a duty to all of their clients, present and
27 former. That fiduciary duty creates obligations of the utmost
28 loyalty and confidentiality and the duty not to compromise the

1 interest of the former client.

2 25. Since at least June of 1991, Yanny has breached and
3 continues to breach his fiduciary duty to RTC, CSI, and CSC in
4 the manner and through the conduct set forth in this Complaint
5 in that Yanny, among other things:

6 (a) Counseled, advised, and otherwise provided legal
7 services to the Aznarans, who are persons with interests
8 adverse to plaintiffs in a matter substantially related to
9 matters in which Yanny formerly represented plaintiffs;

10 (b) Undertook direct representation of the Aznarans
11 against RTC, CSI, and other Scientology-affiliated
12 organizations as counsel of record in the Aznaran case in
13 direct violation of the fiduciary duty of loyalty that is
14 perpetual and sacrosanct with respect to a lawyer's former
15 clients; and

16 (c) Traded upon the attorney-client communications he
17 received while serving as plaintiff's lawyer by counseling and
18 advising the Aznarans and by serving as their attorney of record
19 and in fact, in direct violation of his perpetual fiduciary
20 duties of loyalty and confidentiality to his former clients.

21 26. As a direct and proximate result of Yanny's
22 persistent and continuing breaches of his fiduciary duties, RTC,
23 CSI, and CSC have been, are and will continue to be irreparably
24 harmed, and unless Yanny and those acting in concert with him
25 are temporarily, preliminarily, and permanently enjoined from
26 continuing that unlawful conduct, further irreparable injury
27 will be caused to RTC, CSI, and CSC.

28 27. RTC, CSI, and CSC have already incurred, and continue

1 to incur, damages as a direct and proximate result of Yanny's
2 conduct as alleged in this Complaint. Those damages are not
3 presently calculable and will cease only when Yanny is ordered
4 to stop his unlawful conduct. In no event, however, are they
5 less than \$1,000,000.00. Consequently, plaintiffs seek
6 compensatory damages according to proof.

7 28. Yanny's conduct is both oppressive and malicious and
8 has been undertaken for the express purpose of injuring
9 plaintiffs, his former clients. Accordingly, plaintiffs are
10 entitled to punitive and exemplary damages in an amount to be
11 determined at trial.

12 SECOND CAUSE OF ACTION

13 (Against All Defendants for Breach of Fiduciary Duty)

14 29. RTC, CSI and CSC repeat, reallege and incorporate
15 herein by this reference each and every allegation contained in
16 paragraphs 1 through 16, inclusive, of this Complaint.

17 30. On July 15, 1991, Yanny and Gerald Armstrong admitted
18 to a partner in the law firm representing CSC, Kendrick Moxon,
19 that Yanny had now undertaken legal representation of Armstrong.

20 31. Yanny knows that Armstrong is presently engaged in
21 litigation adverse to plaintiffs, including the appeal of
22 the very case in which Yanny's advice and counsel was sought and
23 obtained by CSC and by RTC, as alleged in paragraph 16 of this
24 Complaint.

25 32. As an attorney with a long-term, broad ranging
26 professional relationship with RTC, CSI, and CSC, Yanny owes a
27 fiduciary duty to RTC, CSI, and CSC that persists beyond the
28 termination of that relationship, in the same manner that all

1 attorneys on such a duty to all of their clients, present and
2 former. That fiduciary duty creates obligations of the utmost
3 loyalty and confidentiality and the duty not to compromise the
4 interest of the former client.

5 33. Since at least July of 1991, Yanny has breached and
6 continues to breach his fiduciary duty to RTC, CSI, and CSC in
7 the manner and through the conduct set forth in this Complaint
8 in that Yanny, among other things:

9 (a) Counseled, advised, and otherwise provided legal
10 services to Armstrong, who is a person with interests
11 adverse to plaintiffs in a matter substantially related
12 to matters in which Yanny formerly represented
13 plaintiffs;

14 (b) Undertook direct representation of Armstrong against
15 RTC, CSI, and other Scientology-affiliated organizations in
16 direct violation of the fiduciary duty of loyalty that is
17 perpetual and sacrosanct with respect to a lawyer's former
18 clients; and

19 (c) Traded upon the attorney-client communications he
20 received while serving as plaintiff's lawyer by counseling and
21 advising Armstrong in direct violation of his perpetual
22 fiduciary duties of loyalty and confidentiality to his former
23 clients.

24 34. As a direct and proximate result of Yanny's
25 persistent and continuing breaches of his fiduciary duties, RTC,
26 CSI, and CSC have been, are and will continue to be irreparably
27 harmed, and unless Yanny and those acting in concert with him
28 are temporarily, preliminarily, and permanently enjoined from

1 continuing that unlawful conduct, further irreparable injury
2 will be caused to RTC, CSI, and CSC.

3 35. RTC, CSI, and CSC have already incurred, and continu
4 to incur, damages as a direct and proximate result of Yanny's
5 conduct as alleged in this Complaint. Those damages are not
6 presently calculable and will cease only when Yanny is ordered
7 to stop his unlawful conduct. In no event, however, are they
8 less than \$1,000,000.00. Consequently, plaintiffs seek
9 compensatory damages according to proof.

10 36. Yanny's conduct is both oppressive and malicious
11 and has been undertaken for the express purpose of injuring
12 plaintiffs, his former clients. Accordingly, plaintiffs are
13 entitled to punitive and exemplary damages in an amount to be
14 determined at trial.

15 WHEREFORE, plaintiffs pray for judgment as follows:

16 ON THE FIRST CAUSE OF ACTION
17 (REGARDING THE AZNARANS)

18 1. For a temporary restraining order, preliminary
19 injunction and a permanent injunction enjoining Yanny from
20 violating the fiduciary duties he owes to plaintiffs as a res
21 of their earlier attorney-client relationship.

22 2. For compensatory damages according to proof.

23 3. For punitive and exemplary damages in a sum to be
24 determined at trial.

25 ON THE SECOND CAUSE OF ACTION
26 (REGARDING ARMSTRONG)

27 1. For a temporary restraining order, preliminary
28 injunction and a permanent injunction enjoining Yanny from
violating the fiduciary duties he owes to Plaintiffs as a res

1 of their earlier attorney-client relationship.

2 2. For compensatory damages according to proof.

3 3. For punitive and exemplary damages in a sum to be
4 determined at trial.

5 ON ALL CAUSES OF ACTION:

6 1. For such other and further relief as the Court may
7 deem just and proper.

8 DATED: July 18, 1991

Respectfully submitted,

9

10

By: /s/

WILLIAM T. DRESCHER

11

Attorney for Plaintiff
RELIGIOUS TECHNOLOGY CENTER

12

13

John J. Quinn
QUINN, KULLY AND MORROW

14

15

Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY
INTERNATIONAL

16

17

BOWLES & MOXON
Laurie J. Bartilson

18

19

Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY OF
CALIFORNIA

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000516

1
2 VERIFICATION

3 I, Warren McShane, am the Secretary of the Religious
4 Technology Center, plaintiff in this action. I have
5 read the foregoing Verified Complaint for Damages and for
6 Temporary, Preliminary and Permanent Injunctive Relief for
7 Breach of Fiduciary Duty and know the contents thereof. The
8 same is true of my own knowledge, except as to those matters
9 which are therein stated on information and belief, and as to
10 those matters, I believe them to be true.

11 I declare under penalty of perjury that the foregoing is
12 true and correct. Executed this 10th day of July, 1991, at
13 Los Angeles, California.

14 
15 WARREN MCSHANE
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000517

VERIFICATION

I, Lynn R. Farny, am the Secretary of the Church of Scientology International, plaintiff in this action. I have read the foregoing Verified Complaint for Damages and for Temporary, Preliminary and Permanent Injunctive Relief for breach of fiduciary duty and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein stated on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 18th day of July, 1991, at Los Angeles, California.


LYNN R. FARNY

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000519

1 LEWIS, D'AMATO, BRASBOIS & BISGAARD
2 DAVID B. PARKER
3 GRAHAM E. BERRY
4 JAYESH PATEL
221 North Figueroa Street, Suite 1200
Los Angeles, California 90012
(213) 250-1800

5 Attorneys for Defendants JOSEPH A. YANNY, an individual
and JOSEPH A. YANNY, a Professional Law Corporation

6 JOSEPH A. YANNY, ESQ.
7 1925 Century Park East
8 Suite 1260
Los Angeles, California 90067
(213) 551-2966

9 PATRICK K. SMITH, ESQ.
10 1408 Talbott Tower
11 131 N. Ludlow Street
Dayton, Ohio 45402-1773

12 Attorneys for Defendants and Cross-Complainants JOSEPH
13 A. YANNY, an individual and JOSEPH A. YANNY, a
Professional Law Corporation

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF LOS ANGELES

16 RELIGIOUS TECHNOLOGY CENTER, a)
17 California Non-Profit Religious)
18 Corporation; CHURCH OF)
19 SCIENTOLOGY INTERNATIONAL, a)
20 California Non-Profit Religious)
Corporation; and CHURCH OF)
SCIENTOLOGY OF CALIFORNIA, a)
California Non-Profit Religious)
Corporation,)

21 Plaintiffs,)

22 vs.)

23 JOSEPH A. YANNY, an Individual;)
24 JOSEPH A. YANNY, a Professional)
Law Corporation and DOES 1)
25 through 25, Inclusive,)

26 Defendants.)

No. BC 033035

~~REVISED PROPOSED~~ DEFENDANTS'
VERIFIED FIRST AMENDED ANSWER
TO PLAINTIFFS' VERIFIED
COMPLAINT. DEMAND FOR JURY
TRIAL

Motion Cutoff Date:
March 27, 1992

Discovery Cutoff:
March 27, 1992

Trial Date: April 27, 1992
Time: 8:30 a.m.
Dept: 41

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1 Defendants Joseph A. Yanny, an individual, and Joseph A.
2 Yanny, a professional law corporation ("collectively "defendants"),
3 provide the following verified first amended response to
4 plaintiffs' verified complaint in this matter.

5 1. Answering paragraph 1 of plaintiffs' complaint, defendants
6 admit that judgment was entered in the case entitled Religious
7 Technology Center, et al. v. Joseph A. Yanny, et al., Los Angeles
8 Superior Court Case No. C690211, on February 28, 1991, and that
9 plaintiffs were resoundingly defeated in that case. Except as
10 expressly admitted above, defendants deny, generally and
11 specifically, each and every allegation of Paragraph 1 of
12 plaintiffs' complaint.

13 2. Answering Paragraph 2 of plaintiffs' complaint, defendants
14 admit that Plaintiff Religious Technology Center styles itself as a
15 not-for-profit religious corporation organized and existing under
16 the laws of the State of California. Defendants deny, however,
17 that plaintiff is either a "not-for-profit" or "religious
18 corporation" in any meaningful sense of those terms.

19 3. Answering Paragraph 3 of plaintiffs' complaint, defendants
20 admit that Plaintiff Church of Scientology International styles
21 itself as a California not-for-profit religious corporation.
22 Defendants deny, however, that plaintiff is either a "not-for-
23 profit" or "religious corporation" in any meaningful sense of those
24 terms.

25 4. Answering Paragraph 4 of plaintiffs' complaint, defendants
26 admit that Plaintiff Church of Scientology of California styles
27 itself as a California not-for-profit religious corporation.
28 Defendants deny that plaintiff is either a "not-for-profit" or

1 "religious corporation" in any meaningful sense of those terms.

2 5. Answering Paragraph 5 of plaintiffs' complaint, defendants
3 admit that Defendant Joseph A. Yanny is an attorney licensed to
4 practice law in the State of California and a resident of Hermosa
5 Beach, California.

6 6. Answering Paragraph 6 of Plaintiffs' complaint, defendants
7 admit that Defendant Joseph A. Yanny, a professional law
8 corporation, is and has been a professional corporation organized
9 and existing under the laws of the State of California, with its
10 principal office in Los Angeles, California.

11 7. Answering Paragraph 7 of plaintiffs' complaint, defendants
12 deny each and every allegation set forth in this paragraph, and
13 further deny that there are any legitimate fictitiously-named
14 defendants in this action, nor any party to this action against
15 whom these plaintiffs have legitimate claims.

16 8. Answering Paragraph 8 of plaintiffs' complaint, defendants
17 admit that, at various times, defendant has represented certain of
18 the plaintiffs in this action in various cases prior to December
19 1987. Except as expressly admitted above, defendants otherwise
20 deny each and every allegation set forth in paragraph 8 of
21 plaintiffs' complaint.

22 9. Answering Paragraph 9 of plaintiffs' complaint, defendants
23 admit that, at various times, Defendant Joseph A. Yanny represented
24 certain of the plaintiffs in various pieces of litigation prior to
25 December 1987. Except as expressly admitted above, defendants
26 deny each and every allegation set forth in Paragraph 9 of
27 plaintiffs' complaint.

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000522

1 10. Answer. ¶ Paragraph 10 of plaintiffs' complaint,
2 defendants admit that Defendant Joseph A. Yanny provided legal
3 counsel to certain of the plaintiffs in this case between 1983 and
4 1987. Except as expressly admitted above, defendants otherwise
5 deny each and every allegation set forth in Paragraph 10 of
6 plaintiffs' complaint, and further specifically deny that
7 defendants provided legal services to plaintiffs on "essentially
8 all" of plaintiffs' legal matters during that period of time.

9 11. Answering paragraph 11 of plaintiffs' complaint,
10 defendants admit that, during the course of the attorney-client
11 relationship with plaintiffs, there were certain duties that bound
12 both parties to that relationship. Those duties and ethical
13 obligations are a matter of statutory and case law. Except as
14 expressly admitted above, defendants deny each and every allegation
15 set forth in paragraph 11 of the plaintiffs' complaint, and further
16 deny that Paragraph 11 is an accurate rendition of the duties and
17 obligations binding an attorney in the course of an attorney-client
18 relationship.

19 12. Answering Paragraph 12 of plaintiffs' complaint,
20 defendants admit that the defendants were purportedly provided with
21 certain information during the course of defendants' representation
22 of the plaintiffs in this matter. Except as expressly admitted
23 above, defendants otherwise deny each and every allegation of
24 paragraph 12, and further allege that, during the course of the
25 representation of plaintiffs, defendants were rarely, if ever,
26 provided any accurate information concerning the legal, and other
27 concerns of plaintiffs. Rather, defendants at all times were
28 provided with "shore stories" concocted by the plaintiffs to

1 insulate the defendants from the truth concerning the plaintiffs
2 and their various endeavors. This campaign of deceit and
3 disinformation was conducted by plaintiffs to avoid defendants from
4 at any time learning the truth concerning the plaintiffs' improper
5 and frequently criminal activities.

6 13. Answering Paragraph 13 of plaintiffs' complaint,
7 defendants deny each and every allegation set forth in paragraph
8 13.

9 14. Answering Paragraph 14 of plaintiffs' complaint,
10 defendants admit that the attorney-client relationship between
11 plaintiffs and Yanny was terminated no later than the first day of
12 December 1987. Except as expressly admitted above, defendants deny
13 each and every allegation set forth in Paragraph 14 of the
14 complaint.

15 15. Answering Paragraph 15 of plaintiffs' complaint,
16 defendants admit that there was in place, until February 28, 1991,
17 a preliminary injunction, the terms of which are set forth in the
18 injunction. That injunction was obtained by plaintiffs in this
19 matter in the earlier case entitled, Religious Technology Center,
20 et al. v. Joseph A. Yanny, et al., Los Angeles Superior Court Case
21 No. C690211, on the basis of misrepresentations to the court and on
22 the basis of perjured declarations knowingly submitted by these
23 plaintiffs. Defendants further admit that, on or about June 28,
24 1991, defendants appeared as counsel of record for Vicki and
25 Richard Aznaran in a federal court action. The appearance of these
26 defendants as counsel for the Aznarans in that action was made
27 necessary by the improper and contemptible stratagems undertaken by
28 plaintiffs in this matter to deprive the Aznarans of counsel in

1 that matter. In taking what action these defendants did,
2 defendants acted only to protect the Aznarans' constitutional
3 rights to pursue their causes of action against these plaintiffs,
4 who are willing to take, and have taken in the past, any steps they
5 felt necessary, no matter how illegal or unethical those steps may
6 be, to frustrate the Aznarans' rights. Except as expressly
7 admitted above, defendants deny each and every allegation set forth
8 in Paragraph 15 of plaintiffs' complaint.

9 16. Answering Paragraph 16 of plaintiffs' complaint,
10 defendants admit that, to defendants knowledge, the plaintiffs have
11 actively been engaged in litigation in the matter entitled Church
12 of Scientology of California v. Gerald Armstrong, Los Angeles
13 Superior Court Case No. C420153. Except as above expressly
14 admitted above, defendants deny each and every allegation set forth
15 in Paragraph 16 of plaintiffs' complaint.

16 17. Answering Paragraph 17 of plaintiffs' complaint,
17 defendants reallege and incorporate herein by this reference each
18 and every admission, denial and other response contained in
19 paragraphs 1 through 16, inclusive of this answer, to plaintiffs'
20 compliant.

21 18. Answering Paragraph 18 of plaintiffs' complaint,
22 defendants admit that the case filed by Vicki and Richard Aznaran
23 was filed on or about April 1, 1988. Except as expressly admitted
24 above, defendants deny each and every allegation set forth in
25 Paragraph 18 of plaintiffs' complaint.

26 19. Answering Paragraph 19 of plaintiffs' complaint,
27 defendants admit that Vicki and Richard Aznaran were originally
28 represented by Barry Van Sickle, and that Mr. Van Sickle at one

1 point was disqualified by the federal court from representation of
2 the Aznarans. This disqualification was based on most of the same
3 perjured declarations that were submitted by plaintiffs in
4 Religious Technology Center, et al. v. Joseph A. Yanny, et al., Los
5 Angeles Superior Court Case No. C690211. Live testimony by the
6 declarant relied on by the plaintiffs was found to be inherently
7 incredible and not worthy of belief by the Honorable Raymond
8 Cardenas, who tried the bench portion of the trial in Religious
9 Technology Center, et al. v. Joseph A. Yanny, et al. Except as
10 otherwise expressly admitted, defendants deny each and every
11 allegation set forth in Paragraph 19 of plaintiffs' complaint.

12 20. Answering Paragraph 20 of plaintiffs' complaint,
13 defendants admit that, on or about June 28, 1991, Defendant Joseph
14 A. Yanny informed John J. Quinn, counsel for plaintiff Church of
15 Scientology International, that he would substitute into the
16 Aznaran case for the Aznarans and reasonably requested an extension
17 of time to oppose a summary judgment motion. That reasonable
18 request was refused. Except as expressly admitted above,
19 defendants deny each and every allegation set forth in paragraph 20
20 of plaintiffs' complaint.

21 21. Answering Paragraph 21 of plaintiffs' complaint,
22 defendants admit that defendants were substituted in as counsel
23 representing the Aznarans in the federal action, having sought and
24 obtained permission of court for that substitution. Defendants
25 also admit that all requests for a reasonable continuance of time
26 to protect the rights of the Aznarans in that case against a
27 pending motion for summary judgment, which was purposely filed by
28 plaintiffs in this matter at a time when the Aznarans were not

1 represented, were refused. Except as expressly admitted above,
2 defendants otherwise deny each and every allegation set forth in
3 paragraph 21 of plaintiffs' complaint.

4 22. Answering Paragraph 22 of plaintiffs' complaint,
5 defendants admit that plaintiffs in this action predictably made a
6 motion to disqualify defendants from representing the Aznarans.
7 Except as expressly admitted above, defendants deny each and every
8 allegation set forth in Paragraph 22 of plaintiffs' complaint.

9 23. Answering Paragraph 23 of plaintiffs' complaint,
10 defendants admit that defendants acted reasonably and ethically in
11 representing Vicki and Richard Aznaran over a short period of time
12 in the federal action, beginning on June 28, 1991. Except as
13 expressly admitted above, defendants deny each and every allegation
14 set forth in Paragraph 23 of plaintiffs' complaint.

15 24. Answering Paragraph 24 of plaintiffs' complaint,
16 defendants admit that, at various times, defendants have
17 represented certain of the plaintiffs in this action in various
18 cases prior to December 1987. Except as expressly admitted above,
19 defendants otherwise deny each and every allegation set forth in
20 Paragraph 24 of plaintiffs' complaint, and further specifically
21 deny that paragraph 24 is an accurate rendition of the duties and
22 obligations binding an attorney in the course of an attorney-client
23 relationship.

24 25. Answering Paragraph 25 of plaintiffs' complaint,
25 defendants deny each and every allegation set forth in Paragraph
26 25.

27 26. Answering Paragraph 26 of plaintiffs' complaint,
28 defendants deny each and every allegation set forth in Paragraph

1 26.

2 27. Answering Paragraph 27 of plaintiffs' complaint,
3 defendants deny each and every allegation set forth in Paragraph
4 27.

5 28. Answering Paragraph 28 of plaintiffs' complaint,
6 defendants deny each and every allegation set forth in Paragraph
7 28.

8 29. Answering Paragraph 29 of plaintiffs' complaint,
9 defendants reallege and incorporate herein by this reference each
10 and every admission, denial and other response contained in
11 Paragraphs 1 through 16, inclusive of this answer to plaintiffs'
12 complaint.

13 30. Answering Paragraph 30 of plaintiffs' complaint,
14 defendants deny each and every allegation of Paragraph 30.

15 31. Answering Paragraph 31 of plaintiffs' complaint,
16 defendants deny each and every allegation of Paragraph 31.

17 32. Answering Paragraph 32 of plaintiffs' complaint,
18 defendants admit that, at various times, defendants represented
19 certain of the plaintiffs in this action in various cases prior to
20 December 1987. Except as expressly admitted above, defendants
21 otherwise deny each and every allegation set forth in Paragraph 32.
22 Defendants specifically deny that Paragraph 32 is an accurate
23 rendition of the duties and obligations binding an attorney in the
24 course of an attorney-client relationship.

25 33. Answering paragraph 33 of plaintiffs' complaint,
26 defendants deny each and every allegation set forth in Paragraph
27 33.

28 ///

1 34. Answering paragraph 34 of plaintiffs' complaint,
2 defendants deny each and every allegation set forth in paragraph
3 34.

4 35. Answering Paragraph 35 of plaintiffs' complaint,
5 defendants deny each and every allegation set forth in paragraph
6 35.

7 36. Answering Paragraph 36 of plaintiffs' complaint,
8 defendants deny each and every allegation set forth in Paragraph
9 36.

10
11 FIRST AFFIRMATIVE DEFENSE

12 (Failure to State A Cause of Action)

13 37. Further answering said complaint and as a first, separate
14 and affirmative defense thereto, these defendants allege as
15 follows:

16 The complaint and each cause of action contained therein
17 fails to state a cause of action against these defendants upon
18 which relief can be granted.

19
20 SECOND AFFIRMATIVE DEFENSE

21 (This Court Cannot Enjoin The Practice of Law)

22 38. Further answering said complaint and as a second,
23 separate and affirmative defense thereto, these defendants allege
24 as follows:

25 Any attempt by plaintiffs, or any of them, to limit the
26 clientele to which these answering defendants, or any of them, may
27 render legal services after the termination of the attorney-client
28 relationship between the plaintiffs, or any of them, and these

1 answering defendants, or any of them, which limitation goes beyond
2 that required by the rules of professional conduct, is void and
3 unenforceable as a matter of public policy, and constitutes an
4 unenforceable restraint on the right of defendants, or any of them,
5 to pursue their chosen profession.

6
7 THIRD AFFIRMATIVE DEFENSE

8 (Mootness)

9 39. Further answering said complaint and as a third,
10 separate and affirmative defense thereto, these defendants allege
11 as follows:

12 All wrongs alleged by plaintiffs have already been
13 completed, no further or additional alleged actual or potential
14 damages are threatened or even possible, and therefore plaintiffs'
15 claim for injunctive relief is moot and must fail.

16
17 FOURTH AFFIRMATIVE DEFENSE

18 (No Substantial Relationship)

19 40. Further answering said complaint and as a fourth,
20 separate and affirmative defense thereto, these defendants allege
21 as follows:

22 (a) There is no substantial relationship between the
23 matters alleged in the first cause of action of Plaintiffs'
24 complaint and the former representation, and these answering
25 defendants were never in a position where they did or could have
26 received information that the plaintiffs might reasonably have
27 assumed that these answering defendants would or should withhold
28 from either Vicki Aznaran, the former president of plaintiff

1 Religious Technology Center, or Richard Aznaran, a former employee
2 of Church of Scientology International.

3 (b) There is no substantial relationship between the
4 matters alleged in the second cause of action, or any relationship
5 between Defendants and Gerald Armstrong, and the former
6 representation, and these answering defendants were never in a
7 position where they did or could have received information that the
8 plaintiffs might reasonably have assumed that these answering
9 defendants would or should withhold from Gerald Armstrong, a former
10 "intelligence officer" of Scientology's Sea Organization, then the
11 group of the most "elite" of Scientologists who worked directly for
12 L. Ron Hubbard, and who was privy to more than 500,000 pages of
13 documentation about the life of L. Ron Hubbard and the most
14 confidential operations of the Scientology organization.

15
16 FIFTH AFFIRMATIVE DEFENSE

17 (No Disclosure of Confidences)

18 41. Further answering said complaint and as a fifth,
19 separate and affirmative defense thereto, these answering
20 defendants allege as follows:

21 These answering defendants were never in the possession
22 of confidential information which was not already and/or
23 independently known to any or all of Vicki Aznaran, Richard
24 Aznaran, or Gerald Armstrong.

25
26 SIXTH AFFIRMATIVE DEFENSE

27 (Failure to Exhaust Other Remedies)

28 42. Further answering said complaint and as a sixth,

1 separate and affirmative defense thereto, these defendants allege
2 as follows:

3 Each and all purported causes of action set forth in the
4 complaint, and any and all claims based thereon, are barred by
5 reason of plaintiffs' failure to exhaust their other available
6 remedies.

7
8 SEVENTH AFFIRMATIVE DEFENSE

9 (Unclean Hands)

10 43. Further answering said complaint and as a seventh,
11 separate and affirmative defense thereto, these answering
12 defendants repeat, reallege and incorporate herein by reference
13 each and every allegation contained in paragraphs 44, 45, 46, 51,
14 54, 57, and 58 herein and allege as follows:

15 Plaintiffs are barred from bringing this action against
16 these defendants and/or obtaining the equitable relief requested
17 herein under the doctrine of unclean hands.

18
19 EIGHTH AFFIRMATIVE DEFENSE

20 (In Pari Delicto)

21 44. Further answering said complaint and as an eighth,
22 separate and affirmative defense thereto, these answering
23 defendants repeat, reallege and incorporate by reference herein
24 each and every allegation contained in paragraphs 43, 45, 46, 51,
25 54, 57 and 58 herein and allege as follows:

26 Notwithstanding the things alleged of defendants in the
27 complaint, which are denied in the applicable paragraphs herein,
28 plaintiffs and their counsels' conduct in connection with the

1 events allegedly giving rise to the first use of action bars
2 plaintiffs from recovery with regard to the first cause of action
3 under the doctrine of in pari delicto.

4
5 NINTH AFFIRMATIVE DEFENSE

6 (Illegality)

7 45. Further answering said complaint and as a ninth,
8 separate and affirmative defense thereto, these answering
9 defendants repeat, reallege and incorporate herein by reference
10 each and every allegation contained in paragraphs 43, 44, 46, 51,
11 54, 57 and 58 herein and allege on the basis of either personal
12 knowledge or information and belief as follows:

13 Plaintiffs are barred from bringing this action as a
14 result of their acts of illegality in connection with matters that
15 were being handled by defendants for plaintiffs, but not disclosed
16 by plaintiffs to defendants at the time of such handling, services
17 which plaintiffs requested defendants to perform (e.g., with regard
18 to the Flynn settlement agreements), but which they refused to so
19 do because of their illegality, plaintiffs' illegal conduct in
20 committing the acts giving rise to the action entitled Vicki
21 Aznaran, et al. v. Church of Scientology of California, and
22 assigned Case Number C-88-1786 JMI (Ex) by the United States
23 District Court for the Central District of California ("The Aznaran
24 case"); conduct by plaintiffs and their counsel and others,
25 including but not limited to the making of certain settlement
26 proposals to Barry Van Sickle, Esq., for direct communication to
27 Vicki and Richard Aznaran ("the Aznarans") knowing that Barry Van
28 Sickle, Esq. had been disqualified from representing the Aznarans,

1 and knowing that the Aznarans were at the time represented by Ford
2 Greene and participating in conduct which resulted in the Aznarans
3 (in the hopes of facilitating settlement and in accordance with
4 plaintiffs' conditions) dismissing their counsel, Ford Greene.
5 Furthermore, plaintiffs have entered into numerous settlement
6 agreements with many attorneys (e.g. the Flynn settlement
7 agreements), and many of those settlement agreements have included
8 illegal provisions restricting those attorneys from ever
9 representing any clients with interests adverse to the plaintiffs
10 herein, with the effect that the number of attorneys available to
11 represent the Aznarans, and others wishing to litigate against the
12 plaintiffs, have been significantly depleted. Furthermore, other
13 acts of illegality by plaintiffs have been publicly documented.
14 Moreover, plaintiffs have engaged in acts of impropriety including
15 what the District Court in the Aznaran case has referred to in a
16 written order, entered after the events in issue herein, as
17 "outrageous litigation tactics . . . by both sides." Also, the
18 conduct of plaintiffs against various opposing counsel, judges and
19 government authorities (including but not limited to illegal
20 surveillance, obtaining phone company records, breaking and
21 entering, property damage, threatening conduct, killing pets and
22 violence) have discouraged and intimidated attorneys from appearing
23 in litigation against the plaintiffs, thus further significantly
24 depleting the pool of attorneys immediately available to represent
25 the Aznarans, and others, against the plaintiffs.

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TENTH AFFIRMATIVE DEFENSE

(Fraud and Deceit)

46. Further answering said complaint and as a tenth, separate and affirmative defense thereto, these answering defendants repeat, reallege and incorporate herein by reference each and every allegation contained in paragraphs 43, 44, 51, 54, 57 and 58 herein and allege, on the basis of either personal knowledge or information and belief, as follows:

Plaintiffs are barred from bringing this action against these defendants because of their fraud and deceit in the Aznaran case prior to July 1, 1991. Plaintiffs, through their counsel, John J. Quinn ("Quinn") and William T. Drescher ("Drescher"), caused material misrepresentations to be made to the Aznarans with knowledge of the falsity of the misrepresentations at the time they were made and with the intent to deceive the Aznarans, who actually and justifiably relied on those material misrepresentations to their injury, by substituting themselves into the Aznaran case as attorneys pro per in the place of their counsel, Ford Greene, whereupon plaintiffs filed a motion for summary judgment against the Aznarans.

Specifically, Quinn, Drescher, and another attorney, Barry Van Sickle, in or about June 5, 1991, met in a restaurant when they discussed the possible settlement of both the Aznaran case and the case of Corydon v. Church of Scientology, et al. and discussed certain settlement proposals with regard thereto. Obviously, knowing that Van Sickle had been disqualified at their instance from representing the Aznarans in the Aznaran case because of his relationship with defendants herein, and well knowing that

1 the Aznarans were represented by their Attorney of record, Ford
2 Greene, Quinn and Drescher made settlement proposals to Van Sickles
3 regarding possible settlement of the Aznaran case. Quinn and
4 Drescher, on behalf of plaintiffs, specifically discussed details
5 regarding Van Sickles making direct settlement proposals to the
6 Aznarans without the knowledge of their counsel of record, Ford
7 Greene, and with the expectation that the Aznarans might thus be
8 induced to then discharge their attorney, Greene. Furthermore,
9 Drescher, in the presence of Quinn, expressly made it a condition
10 of this meeting(s) and communications that these discussions would
11 never be repeated and would not become the subject of declarations
12 in either the Corydon case or the Aznaran case. By inducing Van
13 Sickles to make settlement proposals to the Aznarans, plaintiffs
14 thus made Van Sickles their agent.

15 On June 20, 1991, or thereabouts, Quinn, Drescher and Van
16 Sickles again met in a restaurant and again discussed joint
17 settlement of the Corydon and Aznaran cases. At this meeting,
18 Quinn and Drescher learned that the Aznarans were now discharging
19 Ford Greene. Neither Quinn nor Drescher disclosed to Van Sickles
20 during either of these restaurant meetings, or at any other
21 relevant time, that plaintiffs were then finalizing a substantial
22 motion for summary judgment in the Aznaran case.

23 Within a very short time thereafter, on July 1, 1991, the
24 Aznarans substituted themselves into the Aznaran case in pro per in
25 place of Greene who they had discharged, and whereupon plaintiffs
26 filed a motion for summary judgment against the Aznarans.

27 Believing that they had taken a major step towards
28 concluding a settlement agreement with plaintiffs, and instead

1 suddenly facing a motion for summary judgment and without essential
2 legal representations, the Aznarans contacted defendants for
3 assistance. Defendants contacted Quinn and requested plaintiffs
4 continue the hearing date on the summary judgment motion so that
5 the Aznarans could obtain new legal counsel and oppose the
6 plaintiffs' motion for summary judgment. Quinn refused to continue
7 the hearing date on plaintiffs' motion for summary judgment.
8 Subsequently, the District Court reinstated Ford Greene as the
9 Aznaran's counsel and shortly thereafter entered a written order
10 referring to the "outrageous litigation tactics" being employed in
11 the case.

12
13 ELEVENTH AFFIRMATIVE DEFENSE

14 (Res Judicata)

15 47. Further answering said complaint and as an eleventh,
16 separate and affirmative defense thereto, these answering
17 defendants allege as follows:

18 Plaintiffs' complaint, and plaintiffs' claims for
19 equitable relief and damages, are barred by the doctrine of res
20 judicata.

21
22 TWELFTH AFFIRMATIVE DEFENSE

23 (Collateral Estoppel)

24 48. Further answering said complaint and as a twelfth,
25 separate and affirmative defense thereto, these answering
26 defendants allege as follows:

27 Plaintiffs' complaint, and plaintiffs' claims for
28 equitable relief and damages therein, are barred by the doctrine of

1 collateral estoppel.

2
3 THIRTEENTH AFFIRMATIVE DEFENSE

4 (Failure to Mitigate Damages)

5 49. Further answering said complaint and as a
6 thirteenth, separate and affirmative defense thereto, these
7 answering defendants allege as follows:

8 Plaintiffs, and/or their counsel or other agents, failed
9 to take proper and reasonable steps to avoid or mitigate the
10 damages alleged in the Complaint, and to the extent of such failure
11 to mitigate or to avoid, damages allegedly incurred by plaintiffs,
12 if any, should be reduced accordingly.

13
14 FOURTEENTH AFFIRMATIVE DEFENSE

15 (Waiver -- of the Attorney/Client Privilege and Estoppel)

16 50. Further answering said complaint and as a
17 fourteenth, separate and affirmative defense thereto, these
18 answering defendants allege as follows:

19 Plaintiffs, inter alia, in filing and prosecuting their
20 complaint in Religious Technology Center, et al. v. Joseph A.
21 Yanny, et al., Los Angeles Superior Court Case No. C690211 ("Yanny
22 I") have knowingly waived any privilege regarding confidentiality
23 of attorney client communications pursuant to California Evidence
24 Code Section 958 and other applicable law and have thereby released
25 these defendants from any alleged duty to maintain confidences as
26 asserted in this action and are therefore estopped from recovery
27 herein.

28 000538

1 FIFTEENTH AFFIRMATIVE DEFENSE

2 (Waiver and Estoppel -- Crime/Fraud Exception)

3 51. Further answering said complaint and as a fifteenth,
4 separate and affirmative defense thereto, these answering
5 defendants repeat, reallege and incorporate herein by reference
6 each and every allegation contained in paragraphs 45 and 46 of this
7 verified first amended complaint and allege as follows:

8 Plaintiffs are barred from asserting each and all of the
9 purported causes of action in the complaint by reasons of their own
10 acts, omissions and conduct, or that of their agents, pursuant to
11 California Evidence Code §956, in that professional services of
12 defendants were sought or obtained to enable plaintiffs to commit,
13 or plan to commit, a crime or fraud.

14
15 SIXTEENTH AFFIRMATIVE DEFENSE

16 (Waiver and Estoppel -- Multiple Representation)

17 52. Further answering said complaint and as a sixteenth,
18 separate and affirmative defense thereto, these answering
19 defendants allege as follows:

20 Plaintiffs are barred from asserting their first cause of
21 action in their complaint by reason of the joint client exception
22 to the attorney client privilege in that defendants previously
23 represented Vicki Aznaran, jointly with plaintiffs, in a matter(s)
24 of common interest.

25
26 SEVENTEENTH AFFIRMATIVE DEFENSE

27 (Estoppel By Conduct)

28 53. Further answering said complaint and as a

1 seventeenth, separate and affirmative defense thereto, these
2 answering defendants allege as follows:

3 Plaintiffs are equitably estopped from asserting each and
4 all of the purported causes of action in the complaint by reason of
5 their own acts, omissions and conduct, or that of their agents.

6
7 EIGHTEENTH AFFIRMATIVE DEFENSE

8 (Action Barred By Equity and Civil Code Provisions)

9 54. Further answering said complaint and as an
10 eighteenth, separate and affirmative defense thereto, these
11 answering defendants repeat, reallege and incorporate herein by
12 reference each and every allegation contained in paragraphs 43, 44,
13 45, 46 herein and allege as follows:

14 Plaintiffs are barred from judicial relief by the general
15 principles of equity and the specific provisions of Part IV of the
16 Civil Code, including but not limited to §§3512, 3517, 3519, 3524
17 (without any admission of wrongdoing by defendants) and 3533.

18
19 NINETEENTH AFFIRMATIVE DEFENSE

20 (Action Barred By Doctrine of Election of Remedies)

21 55. Further answering said complaint and as a
22 nineteenth, separate and affirmative defense thereto, these
23 answering defendants allege as follows:

24 Plaintiffs are barred from bringing this action against
25 these defendants under the doctrine of election of remedies.

26 / / /

27 / / /

28 / / /

1 TWENTIETH AFFIRMATIVE DEFENSE

2 (Privilege)

3 56. Further answering said complaint and as a twentieth,
4 separate and affirmative defense thereto, these answering
5 defendants allege as follows:

6 At all relevant times, the acts of these answering
7 defendants were privileged under Civil Code §47. Therefore,
8 plaintiffs are barred from maintaining this action.

9
10 TWENTY-FIRST AFFIRMATIVE DEFENSE

11 (Justification -- Defense of Another, Interests
12 Of Third Persons and the Public)

13 57. Further answering said complaint and as a twenty-
14 first, separate and affirmative defense thereto, these answering
15 defendants repeat, reallege and incorporate herein by reference
16 each and every allegation contained in paragraphs 43, 44, 45, 46
17 herein and allege as follows:

18 At all relevant times, the acts of these answering
19 defendants were privileged and justified because, if done at all,
20 they were done in defense of others, the interests of third
21 persons, the interests of justice, and the interests of the public.

22
23 TWENTY-SECOND AFFIRMATIVE DEFENSE

24 (Justification -- Drastic Result Exception
25 To the Substantial Relationship Test)

26 58. Further answering said complaint and as a twenty-
27 second, separate and affirmative defense thereto, these answering
28 defendants repeat, reallege and incorporate by reference each and

1 every allegation contained in paragraph 46 herein and allege as
2 follows:

3 At all relevant times, the acts of these answering
4 defendants were justified because the circumstances under which
5 these defendants felt compelled to temporarily represent the
6 Aznarans were created by the plaintiffs' own intentional bad faith
7 conduct, and but for these defendants' assistance, a drastic result
8 would likely have occurred.
9
10

11
12
13 TWENTY-THIRD AFFIRMATIVE DEFENSE

14 (Good Faith and Due Diligence)

15 59. Further answering said complaint and as a twenty-
16 third, separate and affirmative defense thereto, these answering
17 defendants allege as follows:
18

19 Defendants have acted at all times relative hereto in
20 good faith and with due diligence.
21

22
23 TWENTY-FOURTH AFFIRMATIVE DEFENSE

24 (First Amendment Protection and Commerce Clause)

25 60. Further answering said complaint and as a twenty-
26 fourth, separate and affirmative defense thereto, these answering
27 defendants allege as follows:
28

29 Plaintiffs' complaint, and plaintiffs' claims for
30 equitable relief and damages therein, are an unconstitutional
31 attempt to limit and chill defendants' first amendment rights of
32 freedom of speech, assembly and religion and, if granted, would
33 violate, inter alia, the Commerce Clause of the Constitution of the
34 United States and of applicable provisions of the Constitution of
35
36
37

1 the State of California.

2
3 WHEREFORE, these answering defendants, and each of them,
4
5 pray as follows:

6 1. That plaintiffs, or any of them, take nothing by
7 their complaint;

8
9 2. That any temporary restraining order, preliminary
10 injunction or other order entered against defendants, or any of
11 them, in this action be dissolved and rendered of no further force
12 and effect;

13
14 3. For defendants' cost of suit incurred herein; and

15 4. For such other and further relief as may be just and
16 proper under the circumstances.
17

18
19 Dated: January 22, 1992

LEWIS, D'AMATO, BRISBOIS & BISGAARD

20
21
22 By: 

GRAHAM E. BERRY

23 Attorneys for Defendants JOSEPH A.
24 YANNY, an individual, and JOSEPH A.
25 YANNY, a professional law corporation
26
27

28 ISTAMDANS.VC
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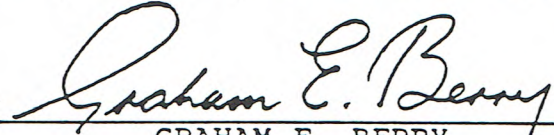
DEMAND FOR JURY TRIAL

Defendants in this action, in which plaintiffs are seeking compensatory, punitive and exemplary damages, request jury trial as to all appropriate issues.

Dated: January 22, 1992

LEWIS, D'AMATO, BRISBOIS & BISGAARD

By



GRAHAM E. BERRY

Attorneys for Defendants JOSEPH A. YANNY, an individual, and JOSEPH A. YANNY, a professional law corporation

answer2.vc

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STATE OF CALIFORNIA, INTY OF LOS ANGELES

I have read the foregoing
AMENDED ANSWER TO PL

ISED PROPOSED) DEFENDANTS'
IFFS' VERIFIED COMPLAINT; D.

FIED FIRST
I, FOR and know its contents.

JURY TRIAL

☐ CHECK APPLICABLE PARAGRAPH

☒ I am party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☒ I am ☒ an officer ☐ a partner ☐ a _____ of _____
JOSEPH A. YANNY, A PROFESSIONAL CORPORATION

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. ☒ I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. ☐ The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☐ I am one of the attorneys for _____, a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on January 22, 19 92, at Los Angeles, California.
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

JOSEPH A. YANNY

Type or Print Name

Signature

PROOF OF SERVICE
1013A (3) CCP Revised 5/1/88

STATE OF CALIFORNIA, COUNTY OF

I am employed in the county of _____, State of California.

I am over the age of 18 and not a party to the within action. my business address is _____

On _____, 19 _____, I served the foregoing document described as _____

_____ on _____ in this action.

- ☐ by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:
☐ by placing ☐ the original ☐ a true copy thereof enclosed in sealed envelopes addressed as follows:

☐ BY MAIL

☐ *I deposited such envelope in the mail at _____, California.

The envelope was mailed with postage thereon fully prepaid.

☐ As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at _____, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on _____, 19 _____, at _____, California.

☐ *(BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

Executed on _____, 19 _____, at _____, California.

☐ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

000545

Type or Print Name

Signature

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I am over age 18 and not a party to this cause. On January 23, 1992, I personally served a true and correct copy of [REVISED PROPOSED] DEFENDANTS' VERIFIED FIRST AMENDED ANSWER TO PLAINTIFFS' VERIFIED COMPLAINT; DEMAND FOR JURY TRIAL on each of the following:

Service was accomplished in the manner checked below:

_____ During the absence of the attorney from the office, I left it with the attorney's clerk or with a person having charge of the office.

_____ When the office of the attorney was closed, I left it at the attorney's residence (which is in the same county as his or her office) with a person at least 18 years old.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on January 23, 1992.

PROOF OF PERSONAL SERVICE

(Non-attorney--California state courts only)

I am over age 18 and not a party to this cause. On January 23, 1992, I personally served a true and correct copy of [REVISED PROPOSED] DEFENDANTS' VERIFIED FIRST AMENDED ANSWER TO PLAINTIFFS' VERIFIED COMPLAINT; DEMAND FOR JURY TRIAL on each of the following:

William T. Drescher, Esq.
23679 Calabasas Road
Suite 338
Calabasas, California 91302

Service was accomplished in the manner checked below:

_____ I personally delivered it to the attorney(s) or party named above.

_____ During the absence of the attorney from the office, I left it with the attorney's clerk or with a person having charge of the office.

_____ When there was no person in the attorney's office, I left it in a conspicuous place in the office between 9:00 a.m. and 5:00 p.m.

_____ When the office of the attorney was closed, I left it at the attorney's residence (which is in the same county as his or her office) with a person at least 18 years old.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on January 23, 1992.

(Print name of server)

PROOF OF SERVICE BY MAIL

[CCP § 1013(a)]

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Lewis, D'Amato, Brisbois & Bisgaard, 221 North Figueroa Street, Suite 1200, Los Angeles, California 90012.

On January 23, 1992, I served the foregoing document described as:

[REVISED PROPOSED] DEFENDANTS' VERIFIED FIRST AMENDED ANSWER TO PLAINTIFFS' VERIFIED COMPLAINT; DEMAND FOR JURY TRIAL

on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail at: Los Angeles, California 90012 addressed as follows:

Joseph A. Yanny, Esq.
1925 Century Park East
Suite 1260
Los Angeles, California 90067

I am "readily familiar" with the firm's practice of collection and processing of correspondence for mailing. Under that practice, mail is deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the day of deposit for mailing an affidavit.

Executed on January 23, 1992 at Los Angeles, California.

[X] State I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[] Federal I declare that I am employed in the offices of a member of the bar of this court at whose direction service was made.

Karen D. Cornejo
Karen D. Cornejo

Rev. 10/89

PROOF OF SERVICE BY 1

[CCP § 1013(a)]

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Lewis, D'Amato, Brisbois & Bisgaard, 221 North Figueroa Street, Suite 1200, Los Angeles, California 90012.

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on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail at: Los Angeles, California 90012 addressed as follows:

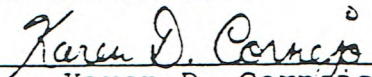
Patrick K. Smith, Esq.
1408 Talbott Tower
131 N. Ludlow Street
Dayton, Ohio 45402-1773

I am "readily familiar" with the firm's practice of collection and processing of correspondence for mailing. Under that practice, mail is deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the day of deposit for mailing an affidavit.

Executed on January 23, 1992 at Los Angeles, California.

[X] State I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[] Federal I declare that I am employed in the offices of a member of the bar of this court at whose direction service was made.


Karen D. Cornejo

Rev. 10/89

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Exhibit K

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1 APPEARANCES:

2 FOR THE PLAINTIFF:

MICHAEL LEE HERTZBERG, ESQ.
740 BROADWAY, FIFTH FLOOR
NEW YORK, NEW YORK 10009

3
4 WILLIAM T. DRESCHER, ESQ.
23679 CALABASAS ROAD
5 SUITE 388
6 CALABASAS, CA. 91302

7
8 FOR THE DEFENDANT:

TOBY PLEVIN, ESQ.
10700 SANTA MONICA BLVD.
9 SUITE 4-300
10 LOS ANGELES, CA. 90025

11 JOSEPH A. YANNY, ESQ.
12 1925 CENTURY BOULEVARD
13 SUITE 1260
14 LOS ANGELES, CA. 90067

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28 000554

1 LOS ANGELES, CALIFORNIA; MONDAY, DECEMBER 23, 1991; 10:30 A.M.

2 DEPARTMENT NO. 56

HON. BRUCE R. GEERNAERT, JUDGE

3 APPEARANCES: (SEE TITLE PAGE.)

4 (HERBERT CANNON, OFFICIAL REPORTER.)

5
6 THE COURT: THE CHURCH OF SCIENTOLOGY VERSUS ARMSTRONG.

7 STATE YOUR APPEARANCES, PLEASE.

8 MR. HERTZBERG: MICHAEL LEE HERTZBERG, H-E-R-T-Z-B-E-R-G,
9 FOR THE MOVING PARTY, YOUR HONOR.

10 MR. DRESCHER: WILLIAM DRESCHER, D-R-E-S-C-H-E-R, ALSO
11 ON BEHALF OF THE MOVING PARTY, YOUR HONOR.

12 MS. PLEVIN: TOBY L. PLEVIN FOR GERALD ARMSTRONG, YOUR
13 HONOR.

14 MR. YANNY: JOSEPH YANNY, INTERVENOR OR PROPOSED
15 INTERVENOR.

16 JUST AS A MATTER OF COURTESY, MR. HERTZBERG
17 DROPPED THAT IN THE AISLEWAY.

18 MR. HERTZBERG: IT WAS A PIECE OF PAPER THAT WAS THROWN
19 AT ME.

20 I AM CONCENTRATING ON THIS ORAL ARGUMENT, YOUR
21 HONOR. THIS IS NOT --

22 THE COURT: DO YOU KNOW WHAT IT IS?

23 MR. HERTZBERG: NO, YOUR HONOR.

24 I DO KNOW WHEN I WENT TO READ THE CALENDAR ON
25 THE HALLWAY A GENTLEMAN APPROACHED ME AND SAID HE HAD SOME-
26 THING FOR ME.

27 MR. YANNY: IT IS A DEPOSITION SUBPOENA, YOUR HONOR.

28 MR. HERTZBERG: LET ME FINISH.

000555

1 I HAVE LOOKED AT THE CALENDAR --

2 THE COURT: THIS IS A MATTER IN WHICH WE HAVE GOT
3 PLENTY TO DO. AND I DON'T HAVE TIME TO BE RECORDING THINGS
4 LIKE THAT.

5 NOW, WE HAVE TWO MOTIONS HERE THIS MORNING.

6 ONE IS A MOTION OF PLAINTIFF AND CROSS-
7 DEFENDANT TO ENFORCE SETTLEMENT AGREEMENT FOR LIQUIDATED
8 DAMAGES AND TO ENJOIN FUTURE VIOLATIONS AND THE OTHER IS A
9 MOTION BY YANNY FOR LEAVE TO INTERVENE IN THIS ACTION.

10 MR. YANNY: AND FOR ACCESS TO THE FILES, YOUR HONOR.

11 THE COURT: ALL RIGHT. NOW, I THINK IT MIGHT BE HELP-
12 FUL, HAVING READ THROUGH THIS, I THINK I -- WHAT I WOULD
13 LIKE TO DO IS MAKE A GENERAL STATEMENT THAT RELATES TO BOTH
14 OF THESE MOTIONS AND RELATES TO THIS CASE AND THE STATUS OF
15 IT AT THIS TIME. BUT THESE ARE GENERAL COMMENTS WHICH ARE
16 NOT DISPOSITIVE HERE AT ALL.

17 I THINK WE NEED TO GET THE OVERALL STRUCTURE
18 OF WHERE WE ARE BECAUSE THIS IS NOT UNIQUE TO BE IN THIS
19 SITUATION WHERE YOU HAVE A SETTLEMENT AND THEN YOU HAVE
20 LATER PROCEEDINGS COMING UP. SO LET ME SAY THAT IN MY
21 EXPERIENCE THE FOLLOWING CIRCUMSTANCES ALSO PREVAIL, THAT
22 IS, YOU HAVE A CONTRACT ENTERED INTO BY PARTIES. I AM
23 GOING TO BE REAL BASIC; NOT QUITE HOW YOU CREATE A CONTRACT,
24 BUT I GUESS -- AND I AM NOT GOING TO DO THIS OFTEN, I HOPE,
25 BUT I AM REMINDED OF A STORY WHEN I WAS A YOUNG LAWYER,
26 JUSTICE PETERS WAS ON THE SUPREME COURT; BECAUSE HE WAS ONE
27 TO ALWAYS GET RIGHT DOWN TO BASICS, A LAWYER APPEARED AND
28 SAID, "THIS IS A CASE INVOLVING A CONTRACT. AND YOU KNOW

000556

1 JUSTICES, A CONTRACT IS FORMED BY AN OFFER AND ACCEPTANCE."
2 AND EITHER JUSTICE PETERS OR SOMEBODY ELSE INTERRUPTED AND
3 SAID, "JUST A MINUTE. YOU CAN ASSUME THAT WE UNDERSTAND
4 THE LAW OF CONTRACTS."

5 AND HE SAID, "WELL, THAT IS THE MISTAKE I MADE
6 LAST TIME."

7 NOW, THAT IS EITHER A TRUE STORY OR ONE THAT
8 JUSTICE PETERS THOUGHT MADE A POINT. AND I AM NOT GOING
9 QUITE THAT FAR, BUT HERE IS THE SITUATION: UNDER THE LAW
10 PARTIES CAN ENTER INTO CONTRACTS. AND THEY ARE CONTRACTS.
11 THEY ARE NOT ORDERS OF COURT. SOME CONTRACTS FALL UNDER
12 664.4 WHICH SAYS, "THE PARTIES TO PENDING LITIGATION
13 STIPULATE IN WRITING OR ORALLY BEFORE THE COURT FOR SETTLE-
14 MENT OF THE CASE OR PART THEREOF THE COURT, UPON MOTION,
15 MAY ENTER JUDGMENT PURSUANT TO THE TERMS OF THE SETTLEMENT."

16 NOW, THE CASES UNDER THAT CODE SECTION GENERALLY
17 RELATE TO THE AGREEMENT HAVING BEEN MADE EITHER WITH OR
18 WITHOUT SUPERVISION OF THE COURT. AND THEN SOMEBODY ISN'T
19 PAYING THE MONEY OR SOMEBODY IS PAYING THE MONEY AND THEY
20 WON'T GIVE A DISMISSAL AND IT IS TO NOT ENFORCE, BUT TO
21 REQUIRE PERFORMANCE OF IT; IN OTHER WORDS, TO CONSUMMATE
22 THE SETTLEMENT. BUT THE CODE SECTION IS BROADER THAN THAT.
23 AND THAT GETS US INTO THESE KINDS OF SITUATIONS.

24 SOMETIMES A CONTRACT IS ENTERED INTO BY PARTIES
25 WITHOUT THE SUPERVISION OF THE COURT; IN OTHER WORDS, THEY
26 SIT AROUND IN AN OFFICE OR HOTEL ROOM OR SOMEPLACE AND SAY
27 IF YOU WILL AGREE TO THIS, I WILL AGREE TO THAT. BUT I WILL
28 ONLY AGREE TO THAT IF YOU AGREE TO THIS.

000557

1 AND THEY DO UP A CONTRACT AND IT HAS CERTAIN
2 PROVISIONS WHICH REQUIRE PARTIES TO DO THINGS, MAYBE TO
3 CONSULT, TO CONSUMMATE THE SETTLEMENT, BUT IN SOME CASES,
4 TO LAST FOR EVER. AND THEY PUT AT THE END OF THE CONTRACT
5 TWO LITTLE WORDS, "SO ORDERED." AND THEY BRING THAT TO A
6 JUDGE.

7 NOW, JUDGES, IN MY EXPERIENCE, ARE VERY
8 CONCERNED ABOUT THIS BECAUSE IT GETS TRICKY. IN OTHER WORDS,
9 WHEN YOU SAY "SO ORDERED," ARE YOU ORDERING WHAT THEY AGREE
10 TO, OR ARE YOU ORDERING SOME PART OF THE AGREEMENT WHICH
11 SAYS IT IS TO BE AN ORDER? IT IS UNFAIR A LOT OF TIMES.

12 SO THE COURT HAS ONE OR TWO WAYS TO GO; I
13 WOULD DO IT OR NOT DO IT AND SAY I'LL ONLY DO IT AFTER WE
14 GO THROUGH THE AGREEMENT AND I MAKE SURE THAT THE PROVISIONS
15 THERE THAT YOU INTEND TO BE IN ORDER ARE ORDERS THAT I AM
16 WILLING TO MAKE BECAUSE COURTS ARE CONSTRAINED NOT TO MAKE
17 ORDERS THAT ARE AMBIGUOUS OR UNCERTAIN OR THAT REQUIRE AN
18 UNDUE AMOUNT OF COURT SUPERVISION.

19 YOU KNOW, WE GET INTO THAT WHEN WE ARE SITTING
20 IN WRITS AND RECEIVERS. YOU CAN'T ISSUE EVERY ORDER SOMEBODY
21 WANTS YOU TO ISSUE OR YOU ARE GOING TO BE RUNNING PEOPLE'S
22 BUSINESSES; YOU'LL BE TAKING CARE OF THEIR HEDGES BETWEEN
23 THEIR HOUSES; SO ORDERED.

24 SURE, A SETTLEMENT GETS DONE, BUT THE
25 SITUATION FROM THERE ON IS A LITTLE UNCLEAR.

26 NOW, AS MORE CLOSELY RELATED HERE, SOMETIMES
27 CONTRACTS CALL FOR CONFIDENTIALITY.

28 NOW, IF A CONTRACT PROVIDES THAT IT WILL BE

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1 MAINTAINED IN CONFIDENCE BY THE PARTIES, ENFORCEMENT OFTEN-
2 TIMES BECOMES A PROBLEM WHETHER OR NOT IT IS SO ORDERED.
3 AND, AGAIN, COURTS ARE CAREFUL HERE FOR THE SAME REASONS.
4 YOU CAN HAVE AN AMBIGUITY; WHAT DOES CONFIDENTIALITY MEAN?
5 TO WHAT EXTENT IS THE COURT GOING TO BE INVOLVED IN SUPER-
6 VISION?

7 AND YOU ALSO HAVE PUBLIC POLICY AS TO PARTIES
8 THAT AREN'T THERE WHEN THEY MAKE THE AGREEMENT AND AREN'T
9 THERE WHEN THE COURT MAKES ITS ORDER, OBVIOUSLY, AREN'T
10 BOUND BY THE AGREEMENT AND SHOULDN'T BE BOUND BY THE COURT'S
11 ORDER IF WE ARE GOING TO HAVE DUE PROCESS.

12 IN OTHER WORDS, PEOPLE THAT AREN'T THERE
13 CAN'T BE BOUND IF THEY DON'T HAVE NOTICE.

14 SO NORMALLY, IN MY EXPERIENCE, AT LEAST, A
15 COURT WILL ORDER A MATTER CONFIDENTIAL ONLY UNTIL FURTHER
16 ORDER OF THE COURT UPON APPLICATION BY ANY LEGITIMATELY
17 INTERESTED THIRD PARTY THAT ISN'T A PARTY AT THE TIME THE
18 ORDER IS MADE BECAUSE THAT IS REQUIRED BY DUE PROCESS.

19 OFTENTIMES THERE ARE A LOT OF PEOPLE THAT
20 AREN'T THERE THAT HAVE A LEGITIMATE INTEREST IN WHETHER OR
21 NOT THE SPECIFIC MATERIAL WILL CONTINUE TO BE EXCLUDED FROM
22 THEIR KNOWLEDGE; THEREFORE, IN THE NORMAL CIRCUMSTANCE ONCE
23 AN ORDER IS MADE SEALING A FILE OR REQUIRING THE PARTIES
24 TO MAINTAIN MATTERS IN CONFIDENCE, IT IS SUBJECT TO A LATER
25 REVIEW BY THE COURT AT THE BEHEST OF SOME LEGITIMATELY
26 INTERESTED THIRD PARTY WHICH COULD INCLUDE THE PUBLIC MEDIA,
27 A LATER LITIGATION WITH EITHER OF THE PARTIES OR LATER
28 LITIGATION BETWEEN TWO OTHER PARTIES WHERE THE INFORMATION

000559

1 IS IMPORTANT TO KNOW. AND YOU CAN REALLY GO ON AD INFINITUM
2 AS TO THE NUMBER OF PEOPLE AND THE CATEGORY OF PEOPLE THAT
3 WOULD HAVE A LEGITIMATE INTEREST IN AT LEAST HAVING A COURT
4 HEAR THEM AS TO WHETHER OR NOT THE "SO ORDERED," THE CONFID-
5 DENTIALITY SHOULD BE MAINTAINED.

6 NOW, THAT IS WHY WHEN I READ IT, AND YOU HAVE
7 CITED IT AGAIN, THE PORTION OF THE OPINION BY THE DIVISION
8 III OF THE SECOND DISTRICT COURT OF APPEAL IN THIS CASE OF
9 JULY 29, 1991 WHERE IT SAYS, "IN OUR CASE CORYDON INTERVENED
10 IN THE ACTION BETWEEN PLAINTIFF AND ARMSTRONG SEEKING
11 ACCESS TO THE FIELD RECORD FOR THE LIMITED PURPOSE OF
12 PREPARING HIS OWN CASES INVOLVING THE CHURCH, JUDGE GEERNAERT
13 ON HIS OWN MOTION VACATED JUDGE BRECKENRIDGE'S ORDER SEALING
14 THE RECORD."

15 AND THIS IS THE COMMENT THAT I HAVE TROUBLE
16 UNDERSTANDING THE SIGNIFICANCE OF.

17 " ... THE TIME HAD LONG SINCE
18 EXPIRED FOR RECONSIDERATION OF JUDGE BRECKENRIDGE'S
19 ORDER, CIVIL CODE SECTION 1008, OR RELIEF THEREFROM
20 PURSUANT TO CCP 437."

21 NOW, I'LL STOP THERE. OBVIOUSLY THE PARTIES
22 WOULD BE BARRED UNDER 437. BUT WOULD ANOTHER LEGITIMATELY
23 INTERESTED PARTY BE PRECLUDED FROM GOING TO JUDGE BRECKEN-
24 RIDGE IF HE WAS SITTING ON THE JUDGE AND SEEKING A CHANGE
25 IN HIS ORDER THAT WAS ENTERED INTO WITHOUT ANY HEARING AND
26 WITHOUT ANY NOTICE TO THIS THIRD PARTY? I DOUBT IT.

27 AND THE REASON I'M RAISING THIS IS THE MOVING
28 PARTIES SAY THAT THIS LITTLE PARAGRAPH IS THE BASIS FOR ME

000560

1 TO PROCEED BASED ON JUDGE BRECKENRIDGE'S ORDERS, AND THAT
2 IS IN QUOTES.

3 NOW, I AM GIVING YOU THIS FOR BACKGROUND SO
4 THAT YOU UNDERSTAND WHERE I AM COMING FROM.

5 I GET THIS FILE BECAUSE I AM STILL SITTING.
6 IT IS MY NUMBER.

7 JUDGE BRECKENRIDGE IS NOW RETIRED AND HE CAN'T
8 DO IT. AND I FEEL THAT IF I HAD MADE THE ORDER I WOULD WANT
9 TO BE IN THE POSITION TO ANALYZE IT, WHETHER OR NOT THAT
10 ORDER THAT WAS MADE FOR THE PARTIES SHOULD NOW BE ENFORCED
11 AS AGAINST ANY LEGIMATELY INTERESTED THIRD PARTY. AND I
12 THINK THAT IS THE SCOPE OF MY JURISDICTION; EVEN THOUGH IT
13 COULD BE READ AS BEING CONTRARY TO THE PARTICULAR PARAGRAPH
14 THAT I HAVE COMMENCED READING AND WHICH IS REFERRED TO BY
15 THE MOVING PARTY.

16 THE REASON I HAVE GONE INTO THIS IS I WANT
17 ANYBODY REVIEWING THIS TO UNDERSTAND THE BASIS FOR ME ENTER-
18 TAINING THIS MOTION AND SOME OF THE REASONING.

19 NOW, WE NOW HAVE ANOTHER THIRD PARTY COMING
20 IN, WHETHER OR NOT LEGITIMATELY INTERESTED REMAINS TO BE
21 SEEN, BY THE NAME OF MR. YANNY. AND HE IS SEEKING ANOTHER
22 LITTLE BIT OF NON-CONFIDENTIALITY.

23 WHAT HAPPENS IS WHEN ONE PARTY COMES IN --
24 AND THIS HAPPENED IN CORYDON; CORYDON CAME IN AND SAID
25 WE WANT TO SEE THESE FILES BECAUSE THEY ARE ESSENTIAL TO OUR
26 LITIGATION. AND THAT WAS DETERMINED TO BE VALID.

27 BUT THEN WE GOT TO THE POINT, HOW DO WE KEEP
28 TRACK OF THIS LITTLE BIT OF CONFIDENTIALITY? 000561

1 IN OTHER WORDS, CORYDON CAN GET IT; CORYDON'S
2 COUNSEL CAN GET IT; COUNSEL'S COUNSEL CAN GET IT; CORYDON'S
3 COUNSEL'S EXPERT CAN GET IT; CORYDON'S FAMILY CAN GET IT;
4 CORYDON CAN OFFER IT IN EVIDENCE IN THE TRIAL. BUT ALL OF
5 THESE PEOPLE ARE SUPPOSED TO MAINTAIN IT IN CONFIDENCE.

6 IN MY EXPERIENCE, THAT IS THE KIND OF ORDER
7 THAT I WOULD NOT ISSUE BECAUSE IT INVOLVES TOTAL AMBIGUITY
8 AND JUST WHEN IS SOMEBODY VIOLATING IT?

9 AND IT IS AN INVITATION FOR ENDLESS COURT
10 SUPERVISION OF AN ALMOST UNSUPERVISORABLE SITUATION BECAUSE
11 ONCE YOU MAKE SOMETHING UNCONFIDENTIAL, ONCE YOU UNSEAL A
12 FILE, THEN IT IS OUT IN THE PUBLIC AND THOSE PEOPLE ARE
13 ALLOWED TO USE IT AND TO DISCLOSE IT TO OTHER PEOPLE. AND
14 THOSE OTHER PEOPLE MAKE USE IT OR DISCLOSE IT TO OTHER
15 PEOPLE AND THEN YOU REALLY BREAK THE BARRIER OF THE SEAL.
16 YOU REALLY BREAK THE BARRIER OF IT BEING CONFIDENTIAL FROM
17 A PRACTICAL STANDPOINT.

18 AND A JUDGE SITTING IN WRITS AND RECEIVERS
19 WOULD NEVER ISSUE THAT KIND OF ORDER IN MY OPINION BECAUSE
20 THEY WOULD BE ENGAGING IN AN ACTIVITY WHICH WOULD NEVER END
21 AND COULD NEVER BE SATISFACTORILY PERFORMED BECAUSE THERE
22 WILL BE PEOPLE COMING IN AND SAY, WELL, I GOT THIS, BUT I
23 GOT IT FROM MR. X. AND THEN YOU WOULD HAVE TO FIND OUT WHERE
24 X GOT IT. AND X GOT IT FROM Y. AND MAYBE Y GOT IT FROM
25 MR. CORYDON.

26 SO I DETERMINED IN RESPONSE TO THE MOTION --
27 AND IT WAS RELIEF BEYOND WHAT WAS ASKED FOR, BUT IT WAS THE
28 ONLY PRACTICAL RELIEF THAT I THOUGHT COULD BE GIVEN.

000562

1 NOW, THE APPELLATE COURT HAS FASHIONED A MORE
2 LIMITED RELIEF. AND I THINK THIS PROCEEDING, BOTH BY
3 MR. -- THE RESPONSE BY MR. ARMSTRONG AND THE OVERTURE BY
4 MR. YANNY REFERRING TO ALL OF THESE DOCUMENTS THAT ARE
5 SUPPOSEDLY CONFIDENTIAL IS AN OUTGROWTH OF THE SUPPOSED
6 LITTLE BIT OF UNCONFIDENTIALITY THAT WAS ISSUED BY THE
7 DIVISION III.

8 SO IF WE HAVE NOW A LITTLE BIT MORE OF UNCON-
9 FIDENTIALITY, YOU EVENTUALLY GET TO WHERE TWO OR THREE
10 LITTLE BITS IS IN EFFECT 100 PERCENT OF UNCONFIDENTIALITY.

11 THIS IS ALL BACKGROUND. AND WE ARE NOW GOING
12 TO GET TO THE MOTIONS. AND THE MOTIONS ARE A LITTLE BIT
13 EASIER ONCE YOU GET TO THE MERITS OF THEM BECAUSE THE FIRST
14 MOTION RELATES TO THIS ORDER OF JUDGE BRECKENRIDGE OF
15 DECEMBER 11, 1986 WHEREIN HE WAS GIVEN A STIPULATED SEALING
16 ORDER. THAT IS THE TITLE OF IT. AND THERE ARE FOUR
17 PARAGRAPHS. AND EACH OF THEM RELATES TO WHAT THE PARTIES
18 HAVE AGREED TO.

19 ONE OF THE AGREEMENTS IS, "IT IS AGREED
20 BETWEEN THE PARTIES THAT SHOULD THE COURT REQUIRE A MOTION
21 FOR ANY FURTHER PLEADING TO EFFECTUATE AND SIGN THIS
22 STIPULATED SEALING ORDER, THE PARTIES WILL JOINTLY COMPLY
23 WITH THE COURT'S FURTHER ORDERS, IF ANY."

24 I UNDERSTAND THAT THERE WERE NONE.

25 THE SECOND PARAGRAPH IS, "THE ENTIRE REMAINING
26 RECORD OF THIS CASE SAVE ONLY THIS ORDER, THE ORDER OF
27 DISMISSAL OF GOOD FAITH AND ANY ORDERS NECESSARY TO EFFEC-
28 TUATE THIS ORDER AND THE ORDER OF DISMISSAL ARE AGREED TO

000563

1 BE PLACED UNDER THE SEAL OF THE COURT."

2 NOW, JUDGE BRECKENRIDGE SIGNED AT THE END
3 UNDER "IT IS SO ORDERED" AND THAT HAS BEEN TAKEN AS AN ORDER
4 SEALING THE FILES.

5 AS I UNDERSTAND IT, THE ACTUAL SETTLEMENT
6 AGREEMENT WAS NEVER FILED, ALTHOUGH IT WAS ORDERED TO BE
7 FILED. SO JUDGE BRECKENRIDGE DID NOT HAVE BEFORE HIM A
8 BASIS FOR THE OTHER AGREEMENT REACHED THAT LED TO THIS
9 CRYPTIC STIPULATED ORDER. AND, IN EFFECT, NOW THE CHURCH
10 COMES WITH THEIR MOTION AND NOW FILES THE AGREEMENT.

11 THIS MOTION IS DIRECTED TO MR. ARMSTRONG WHO,
12 OBVIOUSLY, IS PRIVY TO THE AGREEMENT.

13 THERE WAS FILED A VIDEOTAPE OF THE SIGNING,
14 WHICH I HAVE VIEWED AND WHICH I MAKING A PART OF THIS RECORD
15 SO THAT THAT IS AVAILABLE TO ANYONE REVIEWING THIS PROCEDURE.

16 AND I WOULD HOPE THAT ANYONE REVIEWING THIS
17 PROCEDURE WOULD VIEW THAT TAPE BECAUSE THAT SHOWS THE
18 PROCESS THAT IS FAIRLY COMMON IN REACHING THESE AGREEMENTS.

19 IT IS A HOTEL ROOM. THERE IS JUST THE PARTIES
20 INVOLVED AND THEIR LAWYERS. AND FOR THAT TO BE THE BASIS
21 FOR A COURT ORDER. THAT IS AFTER A CERTAIN PERIOD OF TIME
22 UNATTACKABLE BY THIRD PARTIES IS REALLY NOT WHAT I THINK WAS
23 INTENDED BY DIVISION III WHEN THEY WROTE THAT OPINION. AND
24 THAT WAS THE BASIS FOR MY ORDER WHEN I WAS PRESENTED WITH
25 JUDGE BRECKENRIDGE'S FUNCTION, SINCE HE WAS RETIRED.

26 NOW, BASICALLY, BEFORE WE GET TO THE MERITS
27 OF THE MOTION -- AND I'LL JUST SAY THAT IT APPEARS THAT
28 THERE IS NO CONTEST THAT THE ACTS CHARGED WERE COMMITTED BY

000564

1 MR. ARMSTRONG. IN THE RESPONSE THERE IS NO CONTEST ON THAT.
2 BUT THERE IS A QUESTION AS TO THE COURT'S AUTHORITY TO ISSUE
3 IN EFFECT AN INJUNCTION ENFORCING AN AGREEMENT AND TO AWARD
4 ARTIFICIAL DAMAGES AS AGREED TO IN THE AGREEMENT.

5 IN MY EXPERIENCE ALSO COURTS ARE LOATHE TO
6 ISSUE INJUNCTIONS ENFORCING CONTRACTS UNLESS THERE ARE A
7 LOT OF FACTORS SHOWN. AND THAT IS A WEIGHING PROCESS.

8 THERE IS A QUESTION WHETHER OR NOT UNDER
9 664.6 I EVEN HAVE JURISDICTION TO DO IT. I THINK THAT
10 TECHNICALLY SINCE THERE WAS AN AGREEMENT IN WRITING THAT
11 SETTLED A CASE OR A PART THEREOF THERE IS JURISDICTION.
12 BUT I BELIEVE THAT IN VIEW OF THE WAY THIS ALL EVOLVED, YOU
13 KNOW, IN A HOTEL ROOM RATHER THAN A COURTROOM, THAT IT WOULD
14 BE ENCUMBENT UPON ME WERE I TO ISSUE INJUNCTIVE RELIEF TO
15 HAVE A HEARING AS EXTENSIVE AS I WOULD HAVE IF THIS CAME
16 INTO A WRITS AND RECEIVERS DEPARTMENT WHEREIN SOMEONE HAD
17 ENTERED INTO AN AGREEMENT AND THEY WANTED AN INJUNCTION
18 BASED UPON THAT AGREEMENT.

19 AND THAT INVOLVES ALL OF THE ISSUES THAT ARE
20 INVOLVED WHEN INJUNCTIONS ARE TO BE ISSUED, INCLUDING THE
21 CIRCUMSTANCES INVOLVED IN ENTERING INTO THE AGREEMENT, THE
22 EQUITABLE CONCEPT OF UNCLEAN HANDS, THE PUBLIC POLICY
23 CONCERNING ANY OF THE PROVISIONS SOUGHT TO BE ENFORCED.
24 THESE ARE ALL ARGUED ABOUT IN YOUR PAPERS. BUT I THINK THAT
25 YOU ARE ALL ASSUMING THAT I KNOW MORE THAN I DO REALLY KNOW
26 FROM AN EVIDENTIARY STANDPOINT.

27 SO MY TENTATIVE RULING IS TO SET THIS FOR AN
28 EVIDENTIARY HEARING AND DETERMINE THIS ON ITS MERITS.

000565

1 I REALLY CAN'T DETERMINE IT FROM THE ARGUMENTS
2 SUBMITTED SO FAR.

3 AS FAR AS THE GRANTING OF AN ORDER OR JUDGMENT
4 ASSESSING \$100,000 IN DAMAGES PURSUANT TO THE \$50,000 DAMAGE
5 PROVISIONS, I ALSO THINK THAT SHOULD BE THE SUBJECT OF A
6 HEARING BECAUSE FROM WHAT I CAN TELL THE SPECIFIC CONDUCT
7 WHICH IS CHARGED, ACTING AS A PARALEGAL FOR MR. YANNY IN THE
8 AZNARAN VS. CHURCH --

9 MR. YANNY: EXCUSE ME. AND DECLARATION OF MR. YANNY
10 IN THE CHURCH OF SCIENTOLOGY VS. YANNY IN OPPOSITION TO A
11 RESTRAINING ORDER THAT THEY SOUGHT.

12 THE COURT: AND, THIRD, HELPING FORD GREENE AS A
13 PARALEGAL, WHICH IS, EVIDENTALLY, STILL GOING ON IN
14 CONNECTION WITH THE SERVICES THAT MR. GREENE IS PROVIDING
15 TO THE PLAINTIFF AZNARAN.

16 AND, FOURTH, THE DECLARATION OF AUGUST 26,
17 1991 OF ARMSTRONG FOR AZNARAN.

18 THOSE ARE BREACHES OF THE LANGUAGE OF THE
19 AGREEMENT WHICH IS VERY BROAD AND UNCLEAR IN SOME RESPECTS
20 AND SPECIFICALLY WHEN YOU ARE TRYING TO ENFORCE IT BY WAY
21 OF THIS KIND OF PROVISION.

22 BUT TO READ THE WHOLE AGREEMENT, YOU COME UP
23 WITH A WONDERMENT AS TO WHAT WAS MUTUAL ABOUT IT; IN OTHER
24 WORDS, IT STARTS OUT BY SAYING, "THIS MUTUAL RELEASE OF ALL
25 CLAIMS ... " BUT ALL THE RELEASES ARE BY ARMSTRONG.

26 AND YOU ALSO WONDER TO WHAT EXTENT OFFERING
27 ASSISTANCE IS A TERM THAT IN EFFECT WOULD BE, IF ORDERED --
28 WOULD BE A TERM THAT ANY COURT WOULD PUT IN ITS ORDER.

000566

1 THE AGREEMENT ITSELF, INCIDENTALLY, WAS NOT
2 SUBMITTED TO JUDGE BRECKENRIDGE WITH A LITTLE "SO ORDERED"
3 AT THE BOTTOM. AND I DON'T BELIEVE THE AGREEMENT, THE
4 PERFORMANCE OF THE AGREEMENT TO THIS DATE HAVE EVER BEEN
5 ORDERED PERFORMED.

6 SO YOU ARE NOW SEEKING THIS COURT TO IN EFFECT
7 SAY "SO ORDERED" AND, MORE SPECIFICALLY, TO SPECIFICALLY
8 ENJOIN CERTAIN CONDUCT BASED UPON THE AGREEMENT.

9 THAT REALLY REQUIRES A JUDICIAL PROCEEDING,
10 NOT THE ONE ON THE TAPE.

11 NOW, THAT BEING THE CASE, WE TURN QUICKLY TO
12 MR. YANNY BECAUSE IT IS NOON. AND MR. YANNY HAS NOT FILED
13 A COMPLAINT IN INTERVENTION.

14 DO YOU WANT TO ARGUE THIS FIRST?

15 MR. HERTZBERG: THESE ARE TWO SEPARATE MATTERS, YOUR
16 HONOR.

17 THE COURT: I JUST WANTED TO GIVE YOU WHERE I AM GOING
18 BECAUSE I DON'T THINK, TECHNICALLY, MR. YANNY IS SEEKING ANY
19 RELIEF AGAINST EITHER OF THE PARTIES. WHAT I THINK HE IS
20 DOING IS SEEKING AN OPPORTUNITY TO BE HEARD IN CONNECTION
21 WITH JUDGE BRECKENRIDGE'S ORDER ORDERING THE FILE SEALED.
22 AND UNDER MY VIEW, THAT IS NOT INTERVENING IN THE ACTION. IT
23 COULD BE THE L.A. TIMES OR THE SAN DIEGO PRESS TELEGRAM,
24 IF THAT IS THE RIGHT NAME; IT COULD BE ANY LEGITIMATELY
25 INTERESTED PARTY AND THEY WOULDN'T HAVE TO INTERVENE IN THE
26 ACTION. THEY COULD JUST SIMPLY SEEK BY WAY OF ANY REASONABLE
27 NOTICE OR MOTION A RELAXATION OR VACATION OF THE HEALING
28 ORDER.

000567

1 SO BASICALLY I DON'T THINK IT IS THAT SIGNI-
2 FICANT WHETHER HE IS ALLOWED TO, QUOTE, INTERVENE OR NOT.
3 I AM GOING TO HEAR FROM ANYBODY THAT WANTS TO -- I THINK
4 I'M REQUIRED TO.

5 THE THIRD DISTRICT COMMENT SAID THAT TIME HAS
6 RUN. TIME HAS RUN UNDER 473 FOR THE PARTIES TO DO IT, BUT
7 I DON'T THINK IT HAS RUN FOR THIRD PARTIES THAT WEREN'T EVEN
8 PARTIES THEN SUCH AS CORYDON OR YANNY OR ANYONE ELSE,
9 INCLUDING THE MEDIA TO SEEK THAT FILE TO BE UNSEALED EITHER
10 TOTALLY OR PARTIALLY. AND THAT IS WHAT IS NOW BEING SOUGHT
11 AND THEREFORE I DON'T KNOW WHETHER IT IS CALLED AN INTERVEN-
12 TION.

13 BUT HE IS, CERTAINLY, ENTITLED TO SEEK AN
14 ALTERATION OF THE COURT'S ORDER SEALING THE FILE AND THERE-
15 FORE I DON'T THINK IT IS A REAL MOTION.

16 I THINK HE CAN JUST DO IT. HE IS A MEMBER OF
17 THE PUBLIC AND HE IS ENTITLED TO BE HEARD.

18 MR. YANNY: JUST FOR THE RECORD, THE OPINION OF THE
19 COURT OF APPEAL ITSELF USES THE LANGUAGE THAT CORYDON
20 INTERVENED IN THE OPINION.

21 I WOULD NOTE FOR THE RECORD THAT CORYDON ALSO
22 FILED NO COMPLAINT.

23 THE COURT: THERE IS ANOTHER EXAMPLE. WE ARE JUST
24 TALKING ABOUT TECHNICALITIES.

25 MR. HERTZBERG: JUDGE, MAY I ADDRESS THE MOTION THAT
26 WAS THE PRIMARY MOTION IN FRONT OF THIS COURT?

27 AND UNLESS THE ANCILLARY AND WE WOULD VIEW
28 SUBSIDIARY SIDE SHOW OF THE YANNY MOTION WAS THE ONLY MOTION

000568

1 BEFORE THIS COURT, THIS ACTION WAS, AND THE PROCEEDING
2 BEFORE YOUR HONOR WAS INITIATED BY OUR MOTION, ONE WE TAKE
3 VERY SERIOUSLY, TO ENFORCE THE SETTLEMENT AGREEMENT. AND
4 THAT IS BETWEEN THE MOVING PARTIES AND MR. ARMSTRONG,
5 SITTING OVER IN THE CORNER THERE.

6 AND I AM NOT GOING TO ADDRESS THE YANNY MATTER.
7 MR. DRESCHER WILL ADDRESS THAT. THAT IS A SEPARATE MATTER
8 INSOFAR AS THE COURT CONSTRUES IT AS A MOTION TO SEEK ACCESS
9 TO THE COURT FILES. WE CONSIDER IT STRICTLY SEPARATE AND
10 APART FROM THIS EXTREMELY SERIOUS MATTER OF THE ONGOING
11 BREACHES OF A SETTLEMENT AGREEMENT WHICH WAS BEFORE JUDGE
12 BRECKENRIDGE, NOT JUST ANY HOTEL ROOM, YOUR HONOR.

13 THE COURT: WE'LL GET BACK TO THAT. BUT WHAT I DIDN'T
14 QUITE SAY WAS THAT THE FOUR BREACHES THAT ARE ASSERTED AND,
15 EVIDENTLY, NOT DENIED AS CONDUCT IN ORDER TO DETERMINE
16 WHETHER OR NOT IT IS APPROPRIATE TO AWARD \$50,000 IN HOW
17 THEY ARE CHARACTERIZED AS TWO FOR EACH OR \$100,000; YOU
18 WOULD THEN HAVE TO GET INTO WHETHER OR NOT THOSE WERE
19 ARBITRARY PENALTIES OR WHETHER OR NOT THEY BARE SOME
20 REASONABLE RELATIONSHIP TO THE ACTUAL DAMAGE SUFFERED.

21 NOBODY HAS ARGUED THAT. I CAN'T TELL WHAT
22 MONETARY DAMAGES WOULD FLOW FROM THESE BREACHES THAT ARE NOW
23 ASSERTED. SO, AGAIN, WE NEED AN EVIDENTIARY HEARING IF WE
24 ARE GOING TO HAVE A COURT ORDER ON THESE SUBJECTS.

25 MR. HERTZBERG: MAY I ADDRESS THIS BRIEFLY, YOUR HONOR?

26 THERE ARE CERTAIN THINGS YOUR HONOR HAS SAID.
27 WE HAVE WAITED FOR A CHANCE TO GIVE YOUR HONOR AN ORIENTATION.

28 THERE ARE SEVERAL THINGS YOUR HONOR HAS SAID

000569

1 THAT I THINK EITHER MISPERCEIVE OR DON'T COMPLETELY COVER
2 THE SITUATION THAT IS BEFORE YOU TODAY.

3 THE COURT: IT IS SEVEN OR EIGHT MINUTES AFTER NOON.
4 WHY DON'T WE RESUME AT 2 O'CLOCK? BECAUSE I AM NOT ONLY
5 WILLING, BUT I AM ANXIOUS TO HEAR YOUR RESPONSE TO THIS
6 ANALYSIS. AND I DON'T THINK WE CAN GIVE IT JUSTICE AT THIS
7 TIME.

8 MS. PLEVIN: YOUR HONOR, WITH RESPECT TO THAT, THAT
9 WOULD BE VERY ACCEPTABLE AS FAR AS I AM CONCERNED ON BEHALF
10 OF MR. ARMSTRONG. WE'LL NEED AND REQUEST THIS TIME TO
11 ADDRESS THESE ISSUES: NUMBER ONE, PERHAPS IT IS ONLY FOR
12 THE RECORD, BUT I THINK IT IS IMPORTANT. I DON'T THINK
13 664.6 APPLIES IN THE CIRCUMSTANCE AT ALL. THERE WAS NO
14 JUDGMENT ENTERED. IT WAS A DISMISSAL. SO THE ISSUE AS TO
15 WHETHER THERE IS JURISDICTION MUST FLOW ONLY FROM 127(A)4.
16 664.6 WAS NEVER UTILIZED IN THIS MATTER AND THERE IS NO
17 JUDGMENT. THERE WAS NO ORDER DISMISSING THE ACTION AND THAT
18 IS NOT CONTEMPLATED AS A BASIS FOR CONTINUING JURISDICTION
19 UNDER 664.6.

20 MR. HERTZBERG: I THOUGHT I HAD THE FLOOR HERE, YOUR
21 HONOR.

22 THE COURT: THIS IS A PREVIEW OF WHAT WE'LL DO LATER.

23 BUT I THINK 664.6 CONTEMPLATES A DIFFERENT
24 KIND OF SITUATION WHERE IN EFFECT THE COURT IS ASKED TO
25 ENTER A JUDGMENT WHERE THE PARTIES HAVE AGREED UNDER CERTAIN
26 CIRCUMSTANCES A JUDGMENT WOULD FLOW FROM CONDUCT; THAT IS
27 WHY I AM SAYING THIS DOESN'T -- MAYBE YOUR ARGUMENT IS IF
28 THEY EVER HAVE A HEARING, IT SHOULD BE AFTER FILING A

000570

COMPLAINT; IS THAT IT?

MS. PLEVIN: ESSENTIALLY, YOUR HONOR, OUR ARGUMENT IS THERE IS NO CONTINUING JURISDICTION AT ALL.

THE COURT: I REMEMBER THAT ARGUMENT; EITHER I HAVE NO JURISDICTION OR I HAVE SOME JURISDICTION THAT I WOULD EXERCISE IN A JUDICIAL MANNER RATHER THAN AS A RUBBER STAMP.

MR. PLEVIN: IF WE GO FORWARD, YOUR HONOR, WE'LL NEED ANCILLARY ASSISTANCE FROM THE COURT WITH RESPECT TO EVIDENTIARY MATTERS THAT WE'LL NEED FOR THE HEARING THAT WE'LL NEED ORDERED PRODUCED BY THE OTHER SIDE.

THE COURT: WE'LL RETURN HERE AT 2:30 AND WE'LL BE IN RECESS UNTIL 2:30.

(AT 12:10 P.M. THE LUNCHEON RECESS WAS
TAKEN UNTIL 2:30 P.M. OF THE SAME DAY.)

000571

1 LOS ANGELES, CALIFORNIA; MONDAY, DECEMBER 23, 1991; 2:45 P.M.
2 DEPARTMENT NO. 56 HON. BRUCE R. GEERNAERT, JUDGE
3 (APPEARANCES AS HERETOFORE NOTED.)
4

5 THE COURT: WE'LL BE BACK ON THE RECORD IN THE CHURCH
6 OF SCIENTOLOGY VERSUS ARMSTRONG.

7 YOU MAY PROCEED.

8 MR. HERTZBERG: THANK YOU, YOUR HONOR.

9 I WANT TO ADDRESS YOUR OBSERVATIONS FROM THIS
10 MORNING.

11 FIRST I WANT TO JUST CLARIFY TWO MATTERS IN
12 TERMS OF THE ANALYSIS; ONE, I AM ADDRESSING SOLELY THE
13 ORIGINAL MOTION IN THIS COURT BROUGHT BY THE MOVING PARTIES
14 TO ENFORCE THE SETTLEMENT AGREEMENT AGAINST MR. ARMSTRONG.

15 THE COURT: THAT MOTION SEEKS TWO THINGS: IT SEEKS
16 AN INJUNCTION AND, IN EFFECT, TURNING THE AGREEMENT INTO A
17 COURT ORDER; RIGHT?

18 MR. HERTZBERG: I DON'T KNOW IF IT MEANS TURNING IT
19 INTO A COURT ORDER. IT MEANS EXERCISING THE JURISDICTION
20 WHICH THIS COURT RESERVED BY AN ORDER OF DECEMBER 11TH
21 OVER ENFORCEMENT OF THE SETTLEMENT AGREEMENT.

22 THE COURT: WHATEVER. I MEAN THE EFFECT WOULD BE A
23 COURT ORDER REQUIRING MR. ARMSTRONG NOT TO BREACH THE
24 AGREEMENT.

25 MR. HERTZBERG: CERTAIN PROVISIONS OF THE AGREEMENT;
26 ABSOLUTELY.

27 THE COURT: JUST CERTAIN ONES. AND ALSO IT SEEKS AS A
28 SECOND MATTER A MONEY DAMAGE AWARD EITHER BY WAY OF A

000572

1 JUDGMENT OR VERDICT AS DAMAGES FOR BREACH.

2 MR. HERTZBERG: TO CLARIFY, THOSE TWO ARE NOT CO-
3 EXTENSIVE BECAUSE THE LIQUIDATED DAMAGES PROVISION OF THE
4 SETTLEMENT AGREEMENT COVERS CERTAIN KINDS OF BREACHES.
5 AND WE ARE TALKING IN OUR MOVING PAPERS ABOUT MULTIPLE
6 BREACHES ON MULTIPLE, ONGOING OCCASIONS. AND WE ARE ASKING
7 FOR LIQUIDATED DAMAGES ONLY IN TWO SPECIFIC INSTANCES, THOSE
8 BREACHES WHERE WE FOUND IT CAME WITHIN THE TERMS OF THE
9 CONTRACT IN WHICH LIQUIDATED DAMAGES COMES IN.

10 BUT QUITE INDEPENDENTLY FROM THAT, YOUR
11 HONOR -- AND THIS IS THE POINT I WANTED TO CLARIFY -- THERE
12 ARE BREACHES THAT ARE NOT COMPENSIBLE BY LIQUIDATED DAMAGES
13 THAT WE, NONETHELESS, FEEL THAT WE ARE NOW PRESENTLY
14 ENTITLED TO INJUNCTIVE RELIEF.

15 I WANTED TO ADDRESS YOUR TENTATIVE FROM THIS
16 MORNING IN WHICH YOU SUGGEST THERE ARE REASONS TO HOLD A
17 HEARING. I WOULD LIKE TO CONVINCE YOU, IF I CAN,
18 THAT THERE ARE NO SUCH REASONS.

19 LET'S START FROM THIS PROSPECTIVELY.

20 AS YOUR HONOR RECOGNIZED AND ARTICULATED
21 BETTER THAN I COULD THIS MORNING, THE FACTS ARE CONCEDED
22 HERE WITH RESPECT TO THE BREACHES. THAT IS TO SAY --

23 THE COURT: WHAT I SAID WAS IT IS NOT DISPUTED THAT
24 THE CONDUCT COMPLAINED OF WAS ENGAGED IN. THEY, OBVIOUSLY,
25 ASSERT, A VARIETY OF ASSERTIONS, AS TO WHY THOSE SHOULD NOT
26 BE DEEMED -- ACTUALLY, IT IS A TWO-FOLD -- THREE-FOLD THING:
27 A, WHY THEY SHOULD NOT BE DEEMED BREACHES.

28 B, THAT IF THEY ARE BREACHES, THEY SHOULD

000573

1 BE EXCUSED.

2 SEE, THE COURT HAS NO JURISDICTION TO DETERMINE
3 IT ANYWAY.

4 MR. HERTZBERG: AND I WANTED TO INDICATE IN MY PRESEN-
5 TATION, IF I CAN JUST PROCEED IN AN ORDERLY FASHION, THOSE
6 ARE LEGAL ISSUES, NOT FACTUAL ISSUES; THAT THE POINT OF
7 DEPARTURE IS THAT WE SUBMITTED PAPERS TO THIS COURT IN WHICH
8 WE DOCUMENTED WHAT WE FELT WAS AN UNCONTROVERTED, UNCONTRO-
9 VERTIBLE PATTERN OF BREACHES OF THE AGREEMENT.

10 AND THERE IS NO RESPONSE TO THOSE ALLEGATIONS.

11 IN OTHER WORDS, MR. ARMSTRONG HAS NOT DISPUTED
12 THAT HE DID WHAT WE SAID HE DID. THAT IS THE FIRST PART.

13 AND THAT WHAT WE SAY AND OUR POSITION IS THAT
14 IF GIVEN THAT HE DID WHAT HE SAID HE DID, THOSE WOULD
15 VIOLATE THE PROVISIONS OF THE SETTLEMENT AGREEMENT IF IT
16 WERE OTHERWISE ENFORCEABLE.

17 ALL RIGHT. IT DOESN'T DISPUTE THAT THE
18 LANGUAGE OF THE AGREEMENT -- HE IS NOT CONCEDING THAT IT
19 SHOULD BE APPLIED, BUT HE DOES NOT -- AND THIS IS IMPORTANT
20 -- DISPUTE THAT IF THE AGREEMENT IS ENFORCEABLE, THAT WHAT
21 HE DID COMES WITHIN THE PROHIBITIONS OF THE SECTIONS OF THE
22 AGREEMENT THAT WE ENUMERATE.

23 TAKING THOSE THINGS AS A POINT OF DEPARTURE
24 AND, OF COURSE, THAT IS A MAJOR AREA IN WHICH THERE IS NO
25 FACTUAL DISPUTE AND WHERE THERE CANNOT BE A JUSTIFICATION
26 FOR A HEARING, I WILL TURN TO THE THREE CIRCUMSTANCES OR
27 THREE AREAS WHICH YOUR HONOR IDENTIFIED BEFORE LUNCH WHICH
28 YOU SAID WARRANTED A HEARING.

000574

1 THE FIRST YOU SAID WERE THE CIRCUMSTANCES OF
2 THE ENTRY INTO THE AGREEMENT.

3 I WOULD SUBMIT TO YOUR HONOR THAT DOESN'T
4 MERIT A HEARING INsofar AS MR. ARMSTRONG HAS RAISED AN
5 ARGUMENT NOT DISPUTING THE FACT, BUT RATHER, DISPUTING
6 WHETHER THE CONTRACT IS ENFORCEABLE BECAUSE OF ALLEGED LACK
7 OF RECIPROCITY OR MUTUALITY. THAT IS FUNDAMENTALLY A LEGAL
8 ARGUMENT; FURTHERMORE --

9 THE COURT: JUST A MOMENT.

10 AS I UNDERSTAND IT, IT IS A LITTLE HARD TO
11 FOLLOW BECAUSE IT IS PRESENTED A LITTLE BIT CRYPTICALLY.

12 BUT THE LACK OF RECIPROCITY IS PRESENTED,
13 AS I UNDERSTAND IT, IN LIGHT OF THE AMBIGUITY OF THE
14 AGREEMENT AND THE DURESS ARGUMENT; IN OTHER WORDS, THE
15 AMBIGUITY GOES TO WHETHER OR NOT IT IS APPROPRIATE TO HAVE
16 A COURT ORDER LIMITING THE AGREEMENT.

17 MR. HERTZBERG: MAY I RESPOND TO THAT, YOUR HONOR?

18 FIRST OF ALL, INsofar AS HE IS ARGUING
19 THAT YOUR HONOR SHOULD IMPLY TERMS THAT ARE NOT ON THE
20 PLAIN FACE OF THE CONTRACT, IN OTHER WORDS, THAT --

21 THE COURT: LET ME SAY I AGREE WITH YOU. I DIDN'T GET
22 A CHANCE TO COMPLETELY INDICATE MY THINKING. BUT IF THERE
23 IS A -- YOU KNOW, AT THIS STAGE I AM A LITTLE UNCLEAR
24 EXACTLY THE FULL EXTENT OF WHAT MR. ARMSTRONG IS ASSERTING.

25 BUT TO THE EXTENT THERE IS AN ASSERTION AT
26 THIS TIME THAT I SHOULD READ MORE TERMS INTO THE AGREEMENT,
27 YOU KNOW, I AM NOT INCLINED TO DO THAT.

28 BUT AS I UNDERSTAND THE ARGUMENT -- 000575

1 AND THERE IS SOME OF THAT IN THEIR PAPERS -- I THINK IT GOES
2 A LITTLE FURTHER. AND THAT IS THAT THE AGREEMENT AS
3 WORDED IS ALL ONE-SIDED. IT ONLY RESTRAINS MR. ARMSTRONG
4 AND WHICH THERE IS NOTHING IMMORAL ABOUT IT IF PEOPLE AGREE
5 TO IT, BUT IT RESTRAINED HIM IN WAYS THAT ARE UNCERTAIN,
6 UNCLEAR BECAUSE, FOR EXAMPLE, HE HAS AGREED TO REFRAIN FROM,
7 QUOTE, MAKING HIMSELF -- I AM NOT SURE IT IS A QUOTE,
8 SOMETHING LIKE MAKING HIMSELF AVAILABLE TO THE SERVICE OF
9 LEGAL PROCESS.

10 NOW, AS THEY POINT OUT, DOES THAT MEAN -- THEY
11 DON'T QUITE PUT IT THIS WAY, BUT I'LL PUT IT THIS WAY --
12 DOES THAT MEAN THAT IF I WERE TO ISSUE AN INJUNCTION, THEN
13 WE COULD HAVE A CONTEMPT HEARING IF HE WAS AT A RESTAURANT
14 AND THE PROCESS SERVER CAME IN AND HE DIDN'T JUMP UP AND RUN
15 AWAY?

16 IT IS A CONCEPT THAT I FEEL UNCOMFORTABLE
17 PUTTING INTO AN ORDER, EVEN THOUGH THE PARTIES PUT IT INTO
18 THEIR AGREEMENT.

19 SO THAT IS THE FIRST STEP.

20 BUT THERE IS ANOTHER PART TO IT. AND THAT IS
21 THAT IT BEING SO UNCLEAR AND BEING SO AMBIGUOUS AND BEING
22 SO ONE-SIDED, HE ARGUES THAT IT GIVES SUPPORT TO HIS ARGUMENT
23 THAT IT WAS ENTERED INTO FOR THE REASONS HE SAYS THAT WERE
24 ANYTHING OTHER THAN VOLUNTARILY.

25 AND HE SAYS THERE WERE A LOT OF PEOPLE THAT
26 ALSO WANTED TO ENTER THE AGREEMENT.

27 HIS LAWYER REPRESENTED ALL THE PEOPLE. IF HE
28 HADN'T SIGNED THE AGREEMENT, HE REALLY HAD NO ALTERNATIVE

000576

1 BECAUSE THE LAWYER WAS GETTING OUT EITHER WAY. THERE WAS
2 JUST A SUGGESTION THAT NOBODY IN THEIR RIGHT MIND WOULD
3 ENTER INTO AN AGREEMENT LIKE THIS EXCEPT UNDER SOME KIND OF
4 DURESS.

5 AND THAT IS WHAT WE NEED TO GO INTO.

6 I CAN'T DISPOSE OF THAT ASSERTION AND THOSE
7 CONCLUSIONARY ALLEGATIONS WITHOUT AN EVIDENTIARY HEARING.

8 MR. HERTZBERG: I THINK YOU COULD.

9 THE COURT: I WOULD FEEL UNCOMFORTABLE DOING IT.

10 MR. HERTZBERG: I WOULD LIKE TO FINISH EXPLAINING TO
11 YOU WHY UNDER THE RUBRIC OF CIRCUMSTANCES ENTERING AN
12 AGREEMENT DOES NOT WARRANT AN EVIDENTIARY HEARING.

13 FIRST OF ALL, YOUR HONOR, I BELIEVE, HAS
14 MISINTERPETED THE ONE IMPORTANT PROVISION THAT YOU JUST
15 RECITED INSOFAR AS YOU UNDERSTOOD THAT THERE IS A PROVISION
16 IN THE AGREEMENT THAT HE CANNOT ACCEPT SERVICE OF PROCESS.
17 THAT IS ABSOLUTELY, PATENTLY, NOT THE CASE.

18 THE COURT: LET'S READ IT. I DON'T WANT TO JUST SKIP
19 OVER THAT. I HAVE MARKED IT HERE. LET ME FIND IT.

20 IT IS ON PAGE 11. AND IT SAYS, " ... UNLESS
21 REQUIRED TO DO SO BY SUCH SUBPOENA, PLAINTIFF AGREES NOT TO
22 DISCUSS THIS LITIGATION OR HIS EXPERIENCE WITH AND KNOWLEDGE
23 OF THE CHURCH WITH ANYONE OTHER THAN MEMBERS OF HIS
24 IMMEDIATE FAMILY."

25 MS. PLEVIN: THE SENTENCE STARTS AT THE BOTTOM OF PAGE
26 10, YOUR HONOR.

27 MR. HERTZBERG: COULD I, PLEASE, NOT BE INTERRUPTED?

28 THE COURT: (READING:)

000577

1 " ... PLAINTIFF AGREES NOT TO
2 TESTIFY OR OTHERWISE PARTICIPATE IN ANY OTHER
3 JUDICIAL, ADMINISTRATIVE, OR ADMINISTRATIVELY
4 RELIGIOUS PROCEEDING ADVERSE TO SCIENTOLOGY OR
5 ANY OTHER SCIENTOLOGY CHURCHES."

6 MR. HERTZBERG: MAY I MAKE AN OBSERVATION?

7 THIS PROCEEDING IS, I THINK, SUPPOSED TO GO
8 UNDER SEAL.

9 ALL OUR PAPERS WERE FILED UNDER SEAL. THERE
10 IS A SEALING ORDER WHICH THE COURT OF APPEAL AFFIRMED WITH
11 RESPECT TO THIS PROCEEDING.

12 THE COURT: YOU DON'T WANT ME TO READ THE TERMS?

13 MS. PLEVIN: IS MR. HERTZBERG RAISING THE ISSUE THAT
14 WE SHOULD PROCEED BY A STAR CHAMBERS PROCEDURE, YOUR HONOR?

15 THIS IS PREPOSTEROUS; IN FACT, THE COURT OF
16 APPEAL DID NOT AFFIRM THAT THESE DOCUMENTS BE SEALED AT ALL.
17 THEY ABSOLUTELY REFUSED THE MOVING PARTY'S MOTION TO SEAL
18 ANY OF THE DOCUMENTS IN THE COURT OF APPEAL INCLUDING THE
19 SETTLEMENT AGREEMENT.

20 THE COURT: THEY DID THAT FOR THEIR RECORD. BUT ON
21 MY RECORD, THEY ACTUALLY ISSUED AN ORDER LIMITING THE
22 UNSEALING; IN OTHER WORDS, WE HAVE A SITUATION OF A LITTLE
23 BIT OF NON-CONFIDENTIALITY. NOW, THIS IS A LIVE EXAMPLE OF
24 WHAT I WAS TALKING ABOUT THIS MORNING.

25 HERE WE ARE IN A COURT OF LAW WHERE WE HAVE
26 GOT A MOTION, PUBLIC PEOPLE, INDIVIDUALS THAT WERE NOT A
27 PARTY TO WHATEVER LED UP TO JUDGE BRECKENRIDGE'S ORDER ARE
28 NOW INTERESTED IN THIS PROCEDURE AND YOU ARE NOW SUGGESTING

000578

1 THAT I AM PRECLUDED BY THE PRIVATE AGREEMENT THAT WAS,
2 QUOTE, SO ORDERED BY JUDGE BRECKENRIDGE FROM READING THE
3 TERMS ALLOWED IN THIS PUBLIC HEARING BECAUSE THERE ARE
4 PEOPLE HERE THAT WEREN'T A PARTY AT THAT TIME AND HAD NO
5 VOICE IN WHETHER OR NOT THAT ORDER SEALING THE FILE WAS OR
6 WAS NOT IN THE PUBLIC INTEREST OR IN THEIR INTEREST OR
7 CONTRARY TO THEIR INTEREST.

8 THAT IS THE PROBLEM WITH THESE CONFIDENTIALITY
9 ORDERS OR AGREEMENTS WHEN THEY ARE MADE INTO ORDERS.

10 THAT IS ONE OF THE PROBLEMS.

11 MR. HERTZBERG: BUT WITH ALL DUE RESPECT, YOUR HONOR,
12 THE COURT OF APPEAL SAID WE WERE ENTITLED TO THAT CONFIDENTIALITY IN THIS CASE.

14 MS. PLEVIN: HOWEVER, THE SETTLEMENT AGREEMENT WAS NOT
15 FILED UNDER SEAL. THE SEAL DOES NOT EXTEND TO THE CONFIDENTIALITY AGREEMENT AT ALL. IT HAS NOT BEEN FILED.

17 MR. YANNY: IT CERTAINLY WOULD NOT.

18 MR. HERTZBERG: I WOULD LIKE TO FINISH WITHOUT INTERRUPTION, PLEASE.

20 THE COURT: THIS IS A HEARING. I AM NOT GOING TO HAVE
21 YOU GO THROUGH 14 POINTS AND TRY TO PICK UP ON YOUR FIRST
22 POINT WITH THE OTHER PEOPLE.

23 THIS IS A POINT WE NEED TO DISPOSE OF RIGHT
24 NOW. I AM NOW HEARING FROM OTHER PEOPLE.

25 MR. HERTZBERG: I WAS ONLY POINTING OUT THAT THERE
26 WERE PEOPLE PRESENT AND UNDER MY UNDERSTANDING, THIS
27 DOCUMENT IS UNDER SEAL.

28 BUT LET'S MOVE ON.

000579

1 THE COURT: THIS IS SORT OF SYMPTOMATIC OF THE PROBLEM,
2 COUNSEL. THERE ARE PEOPLE IN THE COURTROOM. I DON'T-KNOW
3 WHO THEY ARE. THERE ARE SIX PEOPLE IN THE COURTROOM. I
4 KNOW ONE MATTER IS ON A MATTER STILL TO BE HEARD THIS
5 AFTERNOON. THERE ARE FIVE PEOPLE THAT I DON'T KNOW WHO THEY
6 ARE.

7 BUT THIS IS A PUBLIC COURTROOM. DO YOU WANT
8 ME TO CLEAR THE COURTROOM?

9 MR. HERTZBERG: IN FLORIDA THE PRESS WAS EXCLUDED,
10 YOUR HONOR.

11 MR. YANNY: YOUR HONOR --

12 MR. HERTZBERG: IN FLORIDA IN ONE OF THE ENFORCEMENT
13 PROCEEDINGS IN FEDERAL COURT THE DISTRICT COURT ORDERED THE
14 PRESS EXCLUDED FROM PRECISELY THIS KIND OF PROCEEDING. AND
15 THE 11TH CIRCUIT AFFIRMED.

16 THE COURT: WAS THAT A PROCEEDING INVOLVING THE
17 CONFIDENTIALITY ORDER OF JUDGE BRECKENRIDGE?

18 MR. YANNY: NO, IT WAS NOT, YOUR HONOR.

19 MR. HERTZBERG: MAY I FINISH, PLEASE?

20 YOUR HONOR, IT WAS AN ENFORCEMENT OF A SIMILAR
21 SETTLEMENT AGREEMENT WHICH WAS SIMILARLY UNDER SEAL.

22 THE COURT: I CAN'T DO SIMILAR. BECAUSE UNDER SOME
23 CIRCUMSTANCES THAT WOULD BE WELL JUSTIFIED. BUT THE CIRCUM-
24 STANCES --

25 MR. HERTZBERG: THEY ARE VIRTUALLY IDENTICAL.

26 THE COURT: I DON'T KNOW THAT. I AM NOT THERE. IT IS
27 NOT TOO HELPFUL. IT IS NOT MUCH OF AN ARGUMENT.

28 I AM NOT GOING TO DEAL WITH THAT. I HAVE TO

000580

1 DEAL WITH THIS.

2 WE ARE DEALING WITH THIS SITUATION HERE. AND
3 MAYBE WE OUGHT TO GET THE FACTS OUTLINED BECAUSE I MAY BE
4 MISTAKEN ON SOME FACTS HERE.

5 MR. HERTZBERG: LET'S GO BACK TO H AT THE BOTTOM OF
6 10 AND LOOK AT IT BECAUSE --

7 THE COURT: LET'S GET DOWN EXACTLY THE FACTS. BECAUSE
8 YOU HAVE NOW SAID ONE THING AND MS. PLEVIN STANDS UP AND
9 SAYS NO, THAT IS NOT RIGHT. THE AGREEMENT WAS NEVER EVEN
10 FILED.

11 SO I WOULD LIKE TO ASSEMBLE IN ONE PLACE,
12 BECAUSE IT IS HARD TO DO. THIS HAS GONE ON FOR SO LONG AND
13 THERE HAS BEEN SO MUCH COURT INVOLVEMENT.

14 WHAT I HAVE IS A DOCUMENT THAT WAS FILED
15 DECEMBER 11, 1986 SAYING "STIPULATED SEALING ORDER." ON THE
16 VIDEO TAPE THERE WERE FOUR DOCUMENTS IDENTIFIED. I COULDN'T
17 READ THEM, OBVIOUSLY. BUT THERE WAS A SETTLEMENT AGREEMENT,
18 A SEALING ORDER, AND TWO AFFIDAVITS.

19 NOW, I GUESS I AM NOT INTERESTED IN WHAT WAS
20 NECESSARILY AT THE SCENE OF THE SIGNING OF THE AGREEMENT AT
21 THIS POINT, BUT WHAT I WOULD LIKE TO KNOW, I WOULD LIKE TO
22 HAVE BEFORE ME EVERYTHING THAT JUDGE BRECKENRIDGE SIGNED AS
23 AN ORDER THAT IS RELEVANT HERE.

24 MR. HERTZBERG: I WOULD LIKE TO PASS UP A DOCUMENT
25 WHICH YOU DON'T HAVE.

26 THE COURT: ADDRESS THAT QUESTION BEFORE WE SKIP OVER
27 IT.

28 IS THERE ANY OTHER DOCUMENT THAT JUDGE

000581

1 BRECKENRIDGE SIGNED THAT RELATES TO OUR PROCEEDING HERE
2 TODAY?

3 MR. HERTZBERG: YES, AT LEAST ONE WHICH I DON'T THINK
4 IS BEFORE YOUR HONOR. AND I JUST GAVE COPIES TO OTHER
5 COUNSEL.

6 THE COURT: ALL RIGHT. HAND IT UP.

7 NOW, FOR THE RECORD COUNSEL HAS HANDED -- I
8 SHOULD EXPLAIN. THIS IS ALSO SYMPTOMATIC OF THE PROBLEM;
9 THAT THE FILE IN THIS CASE HAS BEEN SENT OVER TO ARCHIVES
10 BECAUSE IT IS SO OLD. THAT IS ONE OF THE PROBLEMS IN A
11 JUDICIAL SYSTEM OF HAVING A SITUATION INVOLVING CONTINUAL,
12 OPEN-ENDED, REPEATED COURT SUPERVISION.

13 NOW, WHAT COUNSEL HAS HANDED ME IS A MINUTE
14 ORDER, WHAT PURPORTS TO BE A COPY. IT LOOKS LIKE A MINUTE
15 ORDER OF DECEMBER 11, 1986 IN JUDGE BRECKENRIDGE'S
16 DEPARTMENT. IT IS, OBVIOUSLY, NOT SIGNED BY JUDGE BRECKEN-
17 RIDGE AND IT STATES, "PURSUANT TO STIPULATION OF THE PARTIES,
18 THE CROSS-COMPLAINT IS DISMISSED WITH PREJUDICE. FURTHER,
19 ORDERS ARE MADE PURSUANT TO STIPULATION INCLUDING THE
20 FOLLOWING:

21 "THE COURT RETAINS JURISDICTION
22 TO ENFORCE THE SETTLEMENT AGREEMENT."

23 MR. HERTZBERG: I WAS COMING TO THAT, YOUR HONOR.

24 THE COURT: AND THAT SETTLEMENT AGREEMENT WAS NOT
25 FILED THEN AND IS NOT FILED NOW; IS THAT RIGHT?

26 MR. HERTZBERG: THAT'S RIGHT. BUT IT IS IRRELEVANT.

27 THE COURT: YOU SEE, UNFORTUNATELY -- AND I REALLY
28 MEAN THIS -- IT IS VERY, VERY, VERY UNFORTUNATE THAT JUDGE

000582

1 BRECKENRIDGE ISN'T HERE TO DO THIS BECAUSE YOU ARE NOW
2 SHOWING ME AN ORDER WHICH I DON'T FIND A SIGNATURE ON. WAS
3 THERE SUCH AN ORDER SIGNED?

4 MR. HERTZBERG: TO THE BEST OF MY KNOWLEDGE. WE DIDN'T
5 MAKE THIS UP.

6 THE COURT: I NEED TO SEE IT BECAUSE IT IS VERY
7 UNUSUAL FOR A JUDGE, IN MY LIMITED EXPERIENCE, TO RETAIN
8 JURISDICTION TO ENFORCE A SETTLEMENT AGREEMENT. NORMALLY
9 YOU RETAIN JURISDICTION TO ENFORCE A JUDGMENT OR A COURT
10 ORDER. BUT, YOU SEE, HE DIDN'T EVEN ORDER THE AGREEMENT
11 ITSELF PERFORMED. IF I WOULD DO IT, I WOULD BE THE FIRST ONE
12 EVER TO DO IT.

13 I REALLY NEED TO SEE THE ORDERS THAT WERE
14 SIGNED BY JUDGE BRECKENRIDGE INSOFAR AS YOU ARE SEEKING ANY-
15 THING BASED UPON ORDER BY JUDGE BRECKENRIDGE.

16 YOU SEE, IT IS NOT UNHEARD OF THAT CLERKS
17 DON'T GET THINGS RIGHT.

18 MR. HERTZBERG: LET ME SUGGEST THE FOLLOWING IN ANSWER
19 TO YOUR QUESTION: I DIDN'T MAKE THIS UP.

20 THE COURT: I AM NOT SUGGESTING THAT YOU MADE IT UP.

21 I AM TRYING TO FIGURE OUT THE SIGNIFICANCE.
22 I AM NOT SUGGESTING THAT YOU MADE IT UP.

23 MR. HERTZBERG: THIS IS A CRITICAL DOCUMENT, YOUR
24 HONOR, THAT SHOULD LAY TO REST WITHOUT DOUBT THE ISSUE OF
25 JUDGE BRECKENRIDGE HAVING RETAINED JURISDICTION TO ENFORCE
26 THIS MATTER.

27 AND ONE OTHER POINT, WHICH IS CRITICAL, THERE
28 IS NOTHING TO INDICATE --

000583

1 THE COURT: YOU CAN'T SAY "ENFORCE THIS MATTER."

2 YOU HAVE TO BE PRECISE. WE DON'T ENFORCE
3 MATTERS; WE NORMALLY ENFORCE ORDERS OR JUDGMENTS.

4 ACCORDING TO THIS, IT SAYS ENFORCE THE SETTLE-
5 MENT AGREEMENT.

6 MR. HERTZBERG: THAT IS WHAT IT STATES.

7 THE COURT: THAT IS A BIT BROAD. AND I'LL HAVE TO SEE
8 THE ORDER TO KNOW EXACTLY -- IT DOES SAY PURSUANT TO
9 STIPULATION. SO WE REALLY NEED TO SEE EXACTLY WHAT WAS
10 PUT BEFORE JUDGE BRECKENRIDGE THAT HE SIGNED THAT WE ARE NOW
11 SEEKING TO RETAIN JURISDICTION BASED UPON.

12 MR. HERTZBERG: YOUR HONOR, IF I COULD CLARIFY,
13 JUDGE BRECKENRIDGE KNEW THE TERMS OF THIS SETTLEMENT.

14 THE COURT: HOW DID HE KNOW THEM?

15 MR. HERTZBERG: FOR INSTANCE, I WAS THERE DECEMBER 6TH.

16 THE COURT: WE CAN'T GO ON THAT. HE DIDN'T HAVE THE
17 AGREEMENT.

18 MR. HERTZBERG: THAT DIDN'T MATTER. HE ISSUED --
19 ASSUMING THIS IS A GENUINE DOCUMENT -- HE ISSUED THIS MINUTE
20 ORDER. AND THIS MINUTE ORDER --

21 THE COURT: HE DOES NOT ISSUE A MINUTE ORDER. A
22 MINUTE IS PREPARED BY THE CLERK; SOMETIMES, SOMETIMES NOT,
23 CHECKED BY THE JUDGE INVOLVED.

24 MR. HERTZBERG: IT BEARS A DATE. IT SAYS "MINUTES
25 ENTERED 12/11/86" WITH A COUNTY CLERK SEAL. IT HAS JUDGE
26 BRECKENRIDGE'S NAME AT THE TOP AND HAS THE DATE ABOVE IT.
27 AND WE ARE RELYING ON THIS DOCUMENT.

28 THE COURT: WHAT I AM SAYING TO YOU IS BASICALLY WHAT

000584

1 WE REALLY NEED IS THE ORDER THAT HE SIGNED.

2 NOW, LATER IN THIS PARAGRAPH IT SAYS, " ...
3 THE ENTIRE REMAINING RECORD OF THIS CASE EXCEPT THE
4 STIPULATED SEALING ORDER AND THE ORDER DISMISSING ACTION
5 WITH PREJUDICE FILED THIS DATE ARE ORDERED SEALED AND NOT
6 TO BE OPENED OR INSPECTED WITHOUT PRIOR COURT ORDER."

7 NOW, EVEN THAT IN THE MINUTE ORDER SUGGESTS
8 THAT THIS ISN'T IN STONE FOR EVER. AND I DO HAVE A COPY OF
9 ONE OF THE ORDERS REFERRED TO THERE WHICH CONTAINS LANGUAGE
10 VERY SIMILAR TO THE LAST PART OF THIS MINUTE ORDER, BUT NOT
11 ANYTHING LIKE THE FIRST PART ABOUT RETAINING JURISDICTION
12 TO ENFORCE THE SETTLEMENT AGREEMENT.

13 MS. PLEVIN: THE ONLY PERTINENT DOCUMENT, I BELIEVE,
14 IS EXHIBIT Q TO THE MOTION WHICH IS THE ORDER DISMISSING
15 ACTION WITH PREJUDICE.

16 I BELIEVE, BASED ON MY REVIEW OF THE TRANSCRIPT
17 WHICH, AFTER MR. HERTZBERG'S REMARKS ARE CONCLUDED, I'LL
18 REVIEW WITH YOU IS PROBABLY THE SOURCE OF THE CONFUSION.
19 IT IS ALMOST THE LAST OF THEIR EXHIBITS, YOUR HONOR.

20 THE COURT: I AM LOOKING AT Q. MAYBE THIS IS HELPFUL.
21 THERE IS AN ORDER ON IT HERE, ORDER DISMISSING ACTION WITH
22 PREJUDICE, WHICH SHOWS A CONFIRMED SIGNATURE OF JUDGE
23 BRECKENRIDGE. AND IT IS A FOUR-LINER.

24 MS. PLEVIN: YOUR HONOR, THIS IS THE ORDER WHICH,
25 WHEN THIS MOTION WAS ORIGINALLY FILED, THE MOVING PARTIES
26 CHOSE TO RELY ON FOR THE CLAIM THAT THE COURT RETAINED
27 JURISDICTION TO ENFORCE THE SETTLEMENT AGREEMENT.

28 MR. HERTZBERG: YOUR HONOR, I THOUGHT I HAD THE FLOOR

000585

1 AS THE MOVING PARTY. AND I WOULD LIKE TO MOVE ALONG.

2 THIS IS A SUBSTANTIVE ARGUMENT. I CAN ADDRESS
3 ALL THIS.

4 I AM HAVING TROUBLE BECAUSE DISJOINTED ASPECTS
5 OF THE SUBSTANTIVE ISSUES ARE BEING RAISED HITHER, THITHER
6 AND BEYOND.

7 THE COURT: BUT YOU MUST BE WILLING WHEN YOU MAKE A
8 POINT TO HAVE IT EXAMINED AT THE TIME. THERE ARE PROBABLY
9 10 OR 15 DIFFERENT POINTS INVOLVED IN THIS OVERALL SITUATION.
10 IT IS TOO MUCH OF A BURDEN ON EITHER COUNSEL OR THE COURT
11 TO SAY FORGET THAT ONE; I'LL GO ON TO ANOTHER ONE.

12 MR. HERTZBERG: THEN LET ME RESPOND TO IT.

13 THE JURISDICTIONAL ISSUE WAS BELATEDLY RAISED
14 IN THE ELEVENTH HOUR LAST WEEK AFTER ALL THE OTHER BRIEFING
15 WAS DONE. AND, YOUR HONOR, WE ARE RELYING ON THE SETTLEMENT
16 AGREEMENT WHICH THE PARTIES SIGNED WHICH SAID THAT THE COURT
17 -- THAT WE WERE SUBMITTING OURSELVES TO THE COURT'S FURTHER
18 JURISDICTION TO RESOLVE SETTLEMENT DISPUTES THAT MIGHT ARISE.
19 WE ARE RELYING ON THE ORDER THAT I JUST GAVE YOU. WE ARE --

20 THE COURT: THE MINUTE ORDER OF DECEMBER 11, '86?

21 MR. HERTZBERG: WE ARE RELYING ON ALL THE OTHER ORDERS
22 THAT WERE BEFORE THE COURT. WE ARE RELYING --

23 THE COURT: WHAT OTHER ORDERS? BECAUSE TECHNICALLY,
24 EVERYTHING IN THIS -- I DON'T KNOW -- 12 VOLUME FILE IS,
25 QUOTE, BEFORE ME. AND THEY ARE NOT EVEN IN THE ROOM OR IN
26 THE BUILDING.

27 MR. HERTZBERG: WE ARE RELYING ON THE DECEMBER 8TH,
28 1986 JOINT STIPULATION BETWEEN THE COUNSEL FOR BOTH PARTIES.

000586

1 THE LAST SENTENCE, WHICH SAYS, "THIS COURT
2 SHALL RETAIN JURISDICTION -- "

3 THE COURT: BEFORE YOU READ IT, WHERE IT IS?

4 MS. PLEVIN: IT IS AN EXHIBIT TO THIS REPLY TO THE
5 JURISDICTIONAL BRIEF, YOUR HONOR.

6 MR. HERTZBERG: WE SUBMITTED IT WHEN THEY, LAST WEEK
7 AT THE LAST MOMENT, FILED THEIR JURISDICTIONAL ARGUMENT.

8 THE COURT: WHICH EXHIBIT IS IT?

9 MR. HERTZBERG: THERE'S A DOCUMENT CALLED "SUPPLE-
10 MENTAL REPLY IN SUPPORT OF MOTION TO ENFORCE SETTLEMENT
11 AGREEMENT." IT IS THE DECLARATION OF RANDALL A. SPENCER, AN
12 EXHIBIT A TO THAT.

13 MAY I PASS A COPY UP TO YOUR HONOR?

14 THE COURT: NO. I REALLY NEED TO FIND IT IN THE RECORD
15 HERE.

16 MS. PLEVIN: IT IS NOT RESPONSIVE, YOUR HONOR. IT IS
17 NOT AN ORDER OF THE COURT. IT IS A DOCUMENT SIGNED BY THE
18 PARTIES. IT IS NOT SIGNED BY THE COURT; IT IS NOT AN ORDER.

19 MR. YANNY: AND, YOUR HONOR, THE ORIGINAL QUESTION WAS
20 WHETHER THE COURTROOM SHOULD BE CLEARED.

21 WE HAVE GONE SO FAR AWAY FROM THAT.

22 THE COURT: OKAY. NOW I HAVE THE DOCUMENT. BUT IT IS
23 ENTITLED "REPLY IN SUPPORT OF THE MOTION TO ENFORCE SETTLE-
24 MENT."

25 MR. HERTZBERG: NO. IT IS ENTITLED "SUPPLEMENTAL
26 REPLY IN SUPPORT OF THE MOTION TO ENFORCE SETTLEMENT AGREE-
27 MENT. DECLARATION OF RANDALL A. SPENCER."

28 THE COURT: OKAY. NOW, EXHIBIT A TO THAT IS THE

000587

1 "PETITION FOR REVIEW DENIED IN THE SUPREME COURT."

2 MS. PLEVIN: THAT IS THE WRONG DOCUMENT, YOUR HONOR.

3 THE COURT: IT IS ENTITLED "SUPPLEMENTAL OPPOSITION
4 TO GERALD -- "

5 MR. HERTZBERG: NO. "SUPPLEMENTAL REPLY IN SUPPORT
6 OF THE MOTION." THIS IS A RESPONSE TO THE DOCUMENT YOUR
7 HONOR JUST READ FROM.

8 THE COURT: WHEN WAS IT FILED?

9 MR. HERTZBERG: I THINK TWO DAYS AFTER THAT.

10 MS. PLEVIN: DECEMBER 19TH, YOUR HONOR.

11 THE COURT: OKAY. HERE IT IS.

12 MR. HERTZBERG: EXHIBIT A, YOUR HONOR.

13 THE COURT: THIS IS ENTITLED "JOINT STIPULATION OF
14 DISMISSAL." BUT THERE IS NO ORDER OF COURT OR SIGNATURE OF
15 JUDGE BRECKENRIDGE HERE; RIGHT?

16 MR. HERTZBERG: THAT IS CORRECT, YOUR HONOR.

17 THE COURT: I JUST WANT TO MAKE AN INVENTORY OF WHAT
18 WE HAVE, WHAT MOVING DOCUMENTS WE HAVE THAT RELATE TO THIS
19 ISSUE.

20 MR. HERTZBERG: THAT IS WHY WE ARE GOING THROUGH THIS.

21 THE COURT: WELL, I NEED TO DO IT.

22 MR. HERTZBERG: YOU ASKED ME WHAT I AM RELYING ON. I
23 AM RELYING ON THAT.

24 THE COURT: I'LL PUT DOWN, FIRST OF ALL, THOSE THAT
25 ARE SIGNED BY A JUDGE.

26 WE HAVE THE STIPULATED SEALING ORDER OF
27 DECEMBER 11, '86.

28 THEN WE HAVE THE ORDER DISMISSING ACTION WITH

000588

1 PREJUDICE, ALSO OF DECEMBER 11, '86.

2 THEN WE HAVE THE MINUTE ORDER OF DECEMBER 11.

3 MR. HERTZBERG: THERE ARE TWO ORDERS ON DECEMBER 11TH.
4 ONE IS THE ONE I GAVE YOUR HONOR A FEW MINUTES AGO WHICH HAS
5 THE LANGUAGE, " ... THE COURT RETAINS JURISDICTION TO ..."

6 THE COURT: YOU ARE HOLDING UP THE MINUTE ORDER. THAT
7 IS WHAT I AM NOW INVENTORYING.

8 IT SAYS "MINUTE ORDER OF DECEMBER 11, 1986."

9 AND THEN THERE IS A FOURTH DOCUMENT. THAT IS
10 THE ONE YOU HAVE JUST REFERRED TO; IT IS ENTITLED "JOINT
11 STIPULATION OF DISMISSAL."

12 MR. HERTZBERG: THAT'S RIGHT. NOW, THERE IS ANOTHER
13 ORDER OF DECEMBER 11TH.

14 MR. YANNY: WERE THE LAST TWO SIGNED BY A JUDGE?

15 THE MINUTE ORDER WAS NOT SIGNED BY THE JUDGE
16 AND THE JOINT STIPULATION --

17 MR. HERTZBERG: PLEASE, PLEASE.

18 THERE IS EXHIBIT Q TO OUR MOVING PAPERS;
19 ANOTHER ORDER OF DECEMBER 11, 1986.

20 THE COURT: I HAVE ALREADY CATALOGED THAT. THAT IS
21 THE SECOND ONE THAT IS ENTITLED "ORDER DISMISSING ACTION
22 WITH PREJUDICE."

23 SO THESE ARE IN. THAT IS THE WHOLE LIST.

24 WHAT ELSE IS THERE?

25 MR. HERTZBERG: THERE ARE TWO MORE THINGS. ONE OF THEM
26 IS AN EXCERPT FROM THE DECEMBER 11, 1986 TRANSCRIPT IN THIS
27 CASE BEFORE JUDGE BRECKENRIDGE.

28 THE COURT: IS THAT TRANSCRIPT IN THE RECORD HERE?

000589

1 MS. PLEVIN: I FILED IT, YOUR HONOR. IT SHOULD BE
2 BEFORE YOU. IT WAS FILED ON DECEMBER 20TH.

3 NOTICE OF LODGING OF DOCUMENTS, IT WAS ACCEPTED
4 AS FILED AND IT IS ITEM 1.

5 I FILED THE ENTIRE TRANSCRIPT OF THE PROCEEDINGS
6 OF DECEMBER 11, 1986.

7 THE COURT: THEY SAID THEY HAVE LODGED SOME THINGS
8 HERE.

9 MS. PLEVIN: I MAY HAVE AN EXTRA ONE TO GIVE YOU.

10 MR. HERTZBERG: I HAVE AN EXTRA ONE.

11 THE COURT: HAND IT TO THE CLERK.

12 MR. HERTZBERG: I WANTED TO READ FROM IT.

13 THE COURT: I NEED IT TO FOLLOW ALONG AND LISTEN TO
14 THE CONTEXT.

15 MR. HERTZBERG: I WANTED TO DIRECT YOUR HONOR'S
16 ATTENTION TO PAGE 2, LINES 16 THROUGH 20.

17 THE COURT: OKAY. WHAT I AM GOING TO DO IS TAKE A
18 BRIEF RECESS. WE HAVE ANOTHER MATTER ANYWAY. AND BEFORE
19 WE DO THAT, LET'S JUST DO THIS: THE FIRST ONE LISTED IS THE
20 STIPULATED SEALING ORDER; WHAT DO YOU RELY ON THERE? WHAT
21 PART OF THIS ORDER DO YOU RELY UPON?

22 MR. HERTZBERG: I DON'T HAVE IT IN FRONT OF ME, YOUR
23 HONOR.

24 THE COURT: DURING THIS RECESS GET THEM IN ORDER AND
25 WE'LL EVEN GIVE THEM NUMBERS HERE.

26 THE FIRST ONE IS THE STIPULATED SEALING ORDER.

27 THE SECOND ONE IS THE ORDER DISMISSING ACTION.

28 THE THIRD ONE IS THE MINUTE ORDER. 000590

1 THE FOURTH ONE IS THE JOINT STIPULATION OF
2 DISMISSAL.

3 THE FIFTH ONE IS THE TRIAL TRANSCRIPT, PAGE
4 2, LINE 16 THROUGH LINE 20 OF DECEMBER 11TH.

5 I AM GOING TO ASK YOU NOW AFTER THIS BRIEF
6 RECESS TO GO OVER WITH ME EACH OF THE PORTIONS OF THESE
7 ORDERS THAT YOU RELIED UPON AND STATE WITHOUT DRIFTING THAT
8 THERE IS SOME OTHER ISSUE, WHAT IT IS, AND WHAT YOU RELY
9 UPON IT FOR.

10 MR. HERTZBERG: SURE. I WOULD LIKE TO DO THAT WITHOUT
11 PREJUDICE TO IF WE FIND SOMETHING ELSE AFTER WE LEAVE HERE
12 TODAY, WHILE THIS ACTION IS PENDING, TO ALSO SUBMIT THAT TO
13 THE COURT. BUT, SURELY, WE'LL DO THAT WITH RESPECT TO THESE
14 DOCUMENTS.

15 THE COURT: WELL, OKAY. BUT I THINK THIS OPEN-ENDEDNESS
16 IS A PROBLEM. SO IT IS INCUMBENT UPON YOU TO NOW BE PREPARED
17 TO STATE THE BASIS FOR THE ACTION THAT YOU SEEK THE COURT
18 TO TAKE, NOT TO SAY WE MAY NOT HAVE IT NOW, BUT WE MAY GET
19 IT LATER.

20 MR. HERTZBERG: I AM SAYING THEY JUST FILED LAST WEEK --
21 AFTER ALL THE BRIEFING WAS IN, THEY RAISED THIS JURISDICTION
22 POINT. AND WE HAVE SCRAMBLED TO FIND DOCUMENTS RESPONSIVE
23 TO THAT. WE THINK WE HAVE MORE THAN ENOUGH TO COMPLETELY
24 ANSWER THAT ISSUE. BUT IT SEEMS THAT YOUR HONOR IS TRYING
25 TO HOLD ME FOR IMPERPETUITY WHEN I COME BACK TO SPECIFIC
26 PROVISIONS OF THESE DOCUMENTS. I THINK IN FUNDAMENTAL FAIR-
27 NESS, ALL I WANTED TO DO WAS TO INDICATE THAT I WILL
28 ENDEAVOR TO DO THAT FOR THESE DOCUMENTS. WE DON'T WANT TO

000591

1 SAY THAT WE MAY NOT FIND SOMETHING ELSE BEFORE THIS PROCEEDING
2 IS CONCLUDED.

3 THE COURT: OBVIOUSLY IF YOU MAKE A SHOWING, WE'LL
4 CONSIDER THAT. BUT I THINK YOU ARE DOING THIS A LITTLE TOO
5 LIMITED RIGHT NOW.

6 WHAT I WANT YOU TO DO AFTER THE RECESS IS
7 SPECIFY FOR ME WHAT PROVISIONS YOU RELY ON AND FOR WHAT
8 PURPOSE.

9 THERE IS MORE INVOLVED HERE THAN THE JURIS-
10 DICTIONAL ISSUE, MAYBE.

11 IF THERE IS JURISDICTION, THEN YOU ARE SAYING
12 BASED ON SOMETHING, MAYBE SEVERAL THINGS, WE SEEK AN ORDER,
13 A COURT ORDER, AS YOU ARE SEEKING. AND, OBVIOUSLY, WE NEED
14 TO HAVE THE SAME KIND OF DELINEATION.

15 NOW, WE SHOULD ADD TO THIS LIST, I GUESS, NO.
16 6, THE SETTLEMENT AGREEMENT.

17 DO YOU RELY UPON THAT?

18 MR. HERTZBERG: ABSOLUTELY, WE DO. WE HAVE DONE THAT
19 IN OUR MOVING PAPERS.

20 THE COURT: SO WE ARE NOW ORGANIZING THIS FOR THE
21 HEARING. SO THE SIXTH ITEM IS THE SETTLEMENT CONTRACT.

22 SO, PLEASE, SPECIFY THE PROVISIONS THERE THAT
23 YOU ARE RELYING ON.

24 MR. HERTZBERG: IT IS IN OUR MOVING PAPERS, BUT WE'LL
25 SAY IT A SECOND TIME.

26 THE COURT: BUT, YOU SEE, YOUR MOVING PAPERS WERE
27 FILED BEFORE THEY CONTESTED THE JURISDICTION.

28 MR. HERTZBERG: BUT WE WANTED YOUR HONOR TO KNOW YOU

000592

1 HAD JURISDICTION.

2 THE COURT: THEY ARE A LITTLE CRITICAL OF THE CRYPTIC
3 WAY YOU COVERED THAT.

4 MR. HERTZBERG: THERE IS NOTHING CRYPTIC ABOUT IT.

5 THE COURT: IT WAS TWO LINES IN YOUR MOVING PAPERS.

6 NOW IS YOUR OPPORTUNITY TO EXPAND ON THAT.

7 SO WE'LL BE IN RECESS.

8
9 (UNRELATED MATTERS WERE HEARD BY THE
10 COURT.)

11
12 THE COURT: OKAY. WE ARE BACK ON THE RECORD.

13 NOW, I WILL GIVE YOU WHATEVER TIME YOU NEED.
14 BUT HAVING READ THESE, I THINK WE NEED TO CLARIFY, AS I
15 THINK HE TRIED TO DO AT THE BEGINNING, THE SEPARATENESS
16 OF THE VARIOUS THINGS THAT ARE REQUESTED HERE. AND THESE
17 ORDERS AND THE STIPULATION IN THE MINUTE ORDER READ TOGETHER
18 GIVE A FAIRLY CLEAR PICTURE THAT JUDGE BRECKENRIDGE PLAYED
19 NO ROLE IN SUPERVISING ANY OF THE DOCUMENTS AND READ THEM
20 WHEN HE WAS ASKED TO AND ULTIMATELY ORDERED, PURSUANT TO
21 STIPULATION OF THE PARTIES, THE FILE -- AND THERE WAS SOME
22 DISCUSSION ABOUT WHAT THAT MEANT -- SEALED.

23 HE SAID AT ONE POINT, "LOOK, WE CAN'T GO BACK.
24 OTHER PEOPLE HAVE LOOKED AT THIS FILE. I DON'T KNOW WHO
25 THEY ARE. WE CAN'T DO ANYTHING ABOUT THAT."

26 HE SAID, "THERE MAY BE TIMES IN THE FUTURE
27 WHEN OTHER DOCUMENTS WILL COME BACK FROM THE APPELLATE COURT
28 AND THERE MAY HAVE TO BE FURTHER ORDERS," BUT HE ULTIMATELY

000593

1 SIGNED AN ORDER, I GUESS. I DON'T KNOW IF IT IS ACTUALLY
2 -- LET'S SEE -- YES. IT IS INCLUDED WITHIN THE STIPULATED
3 SEALING ORDER. HE ORDERED THE REMAINING RECORD OF THIS CASE
4 SAVE THE SPECIFIED ORDERS PLACED UNDER THE SEAL OF THE
5 COURT.

6 NOW, TO THE EXTENT THAT THAT IS NOTHING THAT
7 IS SOUGHT BY THE CHURCH, THE CHURCH ISN'T ASKING THAT THAT
8 BE CHANGED AT ALL; SO WE DON'T NEED TO DELVE INTO THAT IN
9 CONNECTION WITH YOUR MOTION.

10 MR. HERTZBERG: NO.

11 THE COURT: WHAT WE ARE DEALING WITH ON YOUR MOTION,
12 SPEAKING TO THE CHURCH, IS THE AGREEMENT WHICH IS CALLED--
13 REFERRED TO AS PARAGRAPH 2 OF THE ORDER DISMISSING ACTION
14 WITH PREJUDICE.

15 THEN IT SAYS, "AN EXECUTED DUPLICATE ORIGINAL
16 OF THE PARTIES' MUTUAL RELEASE OF ALL CLAIMS AND SETTLEMENT
17 AGREEMENT FILED HEREIN UNDER SEAL SHALL BE RETAINED BY THE
18 CLERK OF THIS COURT UNDER SEAL."

19 NOW, IT IS THAT DOCUMENT, WE'LL CALL IT THE
20 SETTLEMENT AGREEMENT, THAT YOU SEEK RELIEF UNDER. AND THAT
21 DOCUMENT WASN'T BEFORE JUDGE BRECKENRIDGE ON DECEMBER 11.
22 AND HE DIDN'T ORDER IT PERFORMED.

23 SO WE NEED TO FIND -- SO YOU ARE NOT SEEKING
24 THE COURT TO EXERCISE THE CONTINUING JURISDICTION THAT I
25 HAVE BEEN TALKING ABOUT IN CONNECTION WITH THE CONFIDEN-
26 TIALITY OR THE SEALING ORDER. YOU ARE TALKING ABOUT SOME-
27 THING TOTALLY DIFFERENT?

28 MR. HERTZBERG: YOUR HONOR, LET ME DIRECT YOU PRECISELY

000594

1 TO THE LANGUAGE WHICH SHOWS THAT IN OUR VIEW, WITHOUT
2 QUESTION, JUDGE BRECKENRIDGE KNEW THAT THIS COURT, IN HIS
3 PERSON IN THE FIRST INSTANCE AND HIS SUCCESSORS AS YOURSELF,
4 WERE GOING TO RETAIN JURISDICTION TO ENFORCE.

5 FIRST OF ALL, CONSIDERATION; THERE IS THE --
6 THE COURT: THE SETTLEMENT AGREEMENT ITSELF?

7 TO ENFORCE THE SETTLEMENT AGREEMENT?

8 MR. HERTZBERG: THAT IS CORRECT, THE SETTLEMENT
9 AGREEMENT WHERE THE PARTIES AGREE, AT PARAGRAPH 20, LOOKING
10 AT THE DOCUMENT YOUR HONOR JUST READ FROM WHICH IS SIGNED
11 BY JUDGE BRECKENRIDGE, THE ORDER DISMISSING THE ACTION WITH
12 PREJUDICE HAS VERY SIGNIFICANT LANGUAGE. AT THE TOP IT SAYS,
13 "UPON CONSIDERATION THE PARTIES STIPULATE FOR DISMISSAL AND
14 THE MUTUAL RELEASE OF ALL CLAIMS IN THE SETTLEMENT AGREEMENT,
15 THE ENTIRE RECORD HEREIN."

16 AND IT IS SO ORDERED. AND THE JUDGE.

17 THE COURT: LET ME INTERRUPT YOU BECAUSE THE RECORD
18 IS QUITE CLEAR THAT JUDGE BRECKENRIDGE DIDN'T HAVE BEFORE
19 HIM, QUOTE, MUTUAL RELEASE OF ALL CLAIMS AND SETTLEMENT
20 AGREEMENT, END QUOTE, BECAUSE IT ISN'T IN THE FILE.

21 MR. HERTZBERG: I'LL SHOW YOU WHAT HE DID HAVE IN
22 FRONT OF HIM.

23 THE COURT: BUT YOU POINTED TO SOMETHING THAT WOULD
24 SUGGEST THAT JUDGE BRECKENRIDGE, UPON CONSIDERATION OF THAT
25 DOCUMENT, ENTERED THIS ORDER.

26 MR. HERTZBERG: I AM NOT SAYING THAT.

27 THE COURT: THE RECORD BELIES THAT.

28 WHY DID YOU EVEN READ IT?

000595

1 MR. HERTZBERG: I WAS ABOUT TO TELL YOU. YOU
2 INTERRUPTED ME.

3 LET ME GO BACK TO IT.

4 IT REFERS TO THE STIPULATION FOR DISMISSAL;
5 CORRECT?

6 AND THIS IS DATED DECEMBER 11TH THAT JUDGE
7 BRECKENRIDGE SIGNED THIS ORDER.

8 WELL, THE JOINT STIPULATION OF DISMISSAL WAS
9 BEFORE THE COURT. IT WAS EXECUTED BY THE PARTIES AND BY ITS
10 TERMS ON PAGE 2 BY THE DATE ON IT, IT SAYS "DATED DECEMBER
11 8TH."

12 SO THREE DAYS BEFORE JUDGE BRECKENRIDGE SIGNED
13 HIS DECEMBER 11TH ORDER, THE PARTIES ENTERED INTO CALLED
14 A JOINT STIPULATION OF DISMISSAL WHICH JUDGE BRECKENRIDGE
15 RECITED ON DECEMBER 11TH AS HAVING READ AND TAKEN IT INTO
16 CONSIDERATION.

17 AND, YOUR HONOR, ON THAT JOINT STIPULATION OF
18 DISMISSAL IT SAYS, "THIS COURT SHALL RETAIN JURISDICTION
19 AND MAY REOPEN THIS CASE AT ANY TIME FOR THE PURPOSES OF
20 ENFORCING SAID AGREEMENT."

21 SO ON DECEMBER 11TH ON AN ORDER THAT WAS
22 SIGNED BY JUDGE BRECKENRIDGE AND FILED IN THE COURT
23 CALLED "ORDER DISMISSING ACTION WITH PREJUDICE," THE JUDGE
24 INCORPORATES BY REFERENCE A DOCUMENT, NOT A SETTLEMENT
25 AGREEMENT, BUT SOMETHING CALLED "JOINT STIPULATION OF
26 DISMISSAL" ENTERED INTO SEVERAL DAYS BEFORE; SAYS HE HAS
27 READ IT; SAYS HE HAS CONSIDERED IT, INCORPORATES IT BY
28 REFERENCE. AND THAT VERY DOCUMENT WHICH THE JUDGE READ AND

1 SAYS HE READ SAYS, "THIS COURT SHALL RETAIN JURISDICTION
2 AND MAY REOPEN THIS CASE AT ANY TIME."

3 OF COURSE, THAT EXPLAINS WHY THIS MINUTE ORDER
4 OF THE 11TH, WHICH YOUR HONOR WAS SO SCEPTICAL ABOUT WHEN
5 YOU SAW IT --

6 THE COURT: I AM NOT SCEPTICAL. I SAID IT DOESN'T
7 BEAR A SIGNATURE.

8 BACK UP A MINUTE. BECAUSE I HAVE LOST YOU
9 HERE.

10 THE JOINT STIPULATION OF DISMISSAL STATES --
11 THE LAST LINES SAY, "THIS COURT SHALL RETAIN JURISDICTION
12 AND MAY REOPEN THIS CASE AT ANY TIME FOR THE PURPOSE OF
13 ENFORCING SAID AGREEMENT."

14 NOW, WHAT DOES "SAID AGREEMENT" REFER TO?

15 MR. HERTZBERG: THE MUTUAL RELEASE OF ALL CLAIMS AND
16 SETTLEMENT AGREEMENT WHICH CONTAINS PARAGRAPH 20.

17 THE COURT: JUST A MINUTE. SO THAT IS THE AGREEMENT
18 THAT THE JUDGE DIDN'T HAVE AND STILL IS NOT IN THE FILE; IS
19 THAT RIGHT?

20 MR. HERTZBERG: FIRST OF ALL, IT IS IN THE FILE
21 BECAUSE IT WAS MADE PART OF THE PAPERS. NOW --

22 THE COURT: BUT THIS MOTION WAS NEVER IN THE FILE AND
23 WAS NOT BEFORE JUDGE BRECKENRIDGE WHEN HE SIGNED THE ORDER
24 THAT REFERS TO THIS STIPULATION.

25 MR. HERTZBERG: BUT WITH ALL DUE RESPECT --

26 THE COURT: IS THAT RIGHT OR NOT?

27 MR. HERTZBERG: YES.

28 THE COURT: SO WHAT YOU ARE SAYING IS THAT -- AND YOU

000597

1 ARE TECHNICALLY CORRECT -- THAT THE PARTIES STIPULATED THAT
2 THIS COURT SHALL RETAIN JURISDICTION AND MAY REOPEN THIS
3 CASE AT ANY TIME FOR THE PURPOSE OF ENFORCING SAID AGREEMENT;
4 JUDGE BRECKENRIDGE DIDN'T SIGN THAT, BUT HE DID SIGN AN
5 ORDER PRESENTED TO HIM THE SAME DAY, AN ORDER DISMISSING
6 ACTION WITH PREJUDICE WHICH SAID THAT HE HAD CONSIDERED
7 THE STIPULATION FOR DISMISSAL WHICH CONTAINS THAT LANGUAGE
8 AND THAT HE HAD CONSIDERED THE MUTUAL RELEASE OF ALL CLAIMS,
9 WHICH HE DIDN'T HAVE BEFORE HIM, AND BASED THEREON, HE
10 ORDERED THE ACTION DISMISSED WITH PREJUDICE AND HE ORDERED
11 THAT THE MUTUAL RELEASE, SETTLEMENT AGREEMENT, SHOULD THEN
12 BE FILED WITH THE CLERK AND PUT UNDER SEAL.

13 SO THAT IS THE RECORD; THAT IS WHAT HAPPENED?

14 MR. HERTZBERG: THAT IS THE RECORD.

15 THE COURT: BUT YOU DO NOT FIND ANY PLACE WHERE HE
16 SIGNED ANY DOCUMENT SAYING THAT THE COURT RETAINED JURIS-
17 DICTION TO ENFORCE THE AGREEMENT; THAT WASN'T BEFORE HIM?

18 MR. HERTZBERG: YOUR HONOR, I RESPECTFULLY SUBMIT
19 THAT WE ARE NOW -- I DON'T KNOW HOW TO PUT THIS -- I SUBMIT
20 -- MAY I RESPECTFULLY SUGGEST TO THE COURT IT IS NOT
21 NECESSARY FOR JUDGE BRECKENRIDGE TO HAVE KNOWN EVERY SINGLE
22 TERM IN THE AGREEMENT IF, INDEED, HE DIDN'T KNOW EVERY TERM
23 IN THE AGREEMENT. AND I DON'T KNOW WHAT WE CAN INFER OR NOT
24 INFER ABOUT THAT BECAUSE MINISTERIALLY, IT WASN'T SUBMITTED
25 TO THE JUDGE CONCURRENTLY.

26 HE UNDERSTOOD WHAT IS CLEARLY BEYOND DISPUTE,
27 THAT IRRESPECTIVE OF WHAT HE KNEW OR DIDN'T KNOW ABOUT THE
28 SPECIFIC TERMS, HE RELATED THAT HE KNEW THAT THE COURT WAS

000598

1 GOING TO RETAIN JURISDICTION; THAT IT WAS A CONDITION THAT
2 WAS BROUGHT TO HIS ATTENTION AS LATER REFLECTED ALSO IN THE
3 MINUTE ORDER.

4 THE COURT: YOU HAVE TO BE MORE PRECISE; "RETAIN
5 JURISDICTION" IS A BROAD TERM.

6 CLEARLY, HE WAS RETAINING JURISDICTION WITH
7 REGARD TO THE SEALING ORDER. BUT TO RETAIN JURISDICTION
8 TO ENFORCE THE AGREEMENT HAS TO COME TO SOMETHING OTHER THAN
9 SOMETHING HE SIGNED BECAUSE HE, PRESUMABLY, KNEW THAT THE
10 PARTIES HAD AGREED THAT THE COURT WOULD RETAIN JURISDICTION.

11 MR. HERTZBERG: IT SAYS --

12 THE COURT: BUT THE PARTIES DIDN'T ASK HIM TO MAKE
13 THAT ORDER AND THEREFORE IT IS A BIT OF A STRETCH TO SAY
14 THAT THERE HAS EVER BEEN AN ORDER PRIOR TO WHAT YOU ARE
15 SEEKING IN THIS CASE ENFORCING OR RETAINING JURISDICTION TO
16 ENFORCE THE SETTLEMENT AGREEMENT.

17 MR. HERTZBERG: I DON'T AGREE. BUT WE CAN GO AROUND
18 AND AROUND ON THIS.

19 I WANT TO POINT OUT ONCE MORE THAT THE DOCU-
20 MENT THAT HE CITED ON THE 11TH AS HAVING READ AND TAKEN INTO
21 ACCOUNT EMPHATICALLY STATES THAT HE WOULD RETAIN JURISDICTION
22 FOR PURPOSES OF ENFORCING THE AGREEMENT.

23 THE COURT: IT DOESN'T SAY "HE"; IT SAYS THIS COURT.
24 THERE IS A BIG DIFFERENCE.

25 MR. HERTZBERG: THAT INCLUDES YOU.

26 SECONDLY, THE MINUTE ORDER IS ENTIRELY
27 CONSISTENT WITH THAT. IT UNAMBIGUOUSLY SAYS THE COURT
28 RETAINS JURISDICTION TO ENFORCE A SETTLEMENT AGREEMENT.

000599

1 WE HAVE SOMETHING FURTHER. JUST BEFORE WE
2 TOOK THE BREAK WHEN THE OTHER CASE CAME IN, IN THE TRANSCRIPT
3 OF THE 11TH THE COURT SAYS ON PAGE 2, LINES 16 THROUGH 20,
4 "I HAVE READ THE PROPOSED STIPULATIONS AND THE ORDER ... "
5 AND THEN IT GOES ON AND TALKS ABOUT SOMETHING ELSE.

6 BUT THE STIPULATION HE IS REFERRING TO IS THE
7 ONE WHICH INCLUDES THE LANGUAGE THAT THE COURT IS RETAINING
8 JURISDICTION TO ENFORCE THE SETTLEMENT.

9 THE COURT: LOOK, I HAVE READ THE WHOLE TRANSCRIPT OF
10 THAT DAY. I THINK HE WAS TALKING THROUGHOUT THE TRANSCRIPT
11 ABOUT THE SEALING ORDER.

12 MS. PLEVIN: SEALING STIPULATION.

13 THE COURT: AND YOU ARE CONCERNED ABOUT THE VERY
14 THINGS THAT I HAVE MENTIONED HERE TODAY AND THAT IS THAT
15 WHEN YOU SEAL A FILE, YOU CAN EXPECT THAT THERE MAY BE LATER
16 REQUESTS BY THE SAME PARTIES OR OTHER PARTIES TO UNSEAL IT.

17 MR. HERTZBERG: YOUR HONOR, OBVIOUSLY, ALL I CAN DO
18 IS GIVE YOU ALL THE INDICIA. WE THINK, SURE, THIS TRANSCRIPT
19 WITH THE SEALING, BUT THAT DOESN'T DETRACT OR MITIGATE THE
20 FACT THAT AT THE VERY OUTSET OF THE HEARING THE JUDGE SAID
21 HE HAD READ CERTAIN PAPERS. AND THOSE PAPERS DEALT WITH,
22 AMONG OTHER THINGS, THE JOINT STIPULATION OF DISMISSAL.

23 NOW, THE JOINT STIPULATION OF DISMISSAL
24 INCLUDES IN IT A SEALING PROVISION. BUT THAT DOESN'T MEAN
25 THAT IT DOESN'T ALSO INCLUDE THE LANGUAGE I READ TO YOU
26 RIGHT BENEATH THE SEALING PROVISION WHICH SAYS, "THIS COURT
27 SHALL RETAIN JURISDICTION AND MAY REOPEN THIS CASE AT ANY
28 TIME FOR THE PURPOSE OF ENFORCING SAID AGREEMENT."

000600

1 MY POINT IS THIS IS FURTHER PROOF THAT HE READ
2 THE WHOLE THING. HE WAS COGNIZANT OF IT AND HE KNEW THAT
3 THIS COURT HAD RETAINED JURISDICTION TO ENFORCE DISPUTES
4 OVER THE SETTLEMENT AGREEMENT WHICH WAS THE INTENT OF THE
5 PARTIES.

6 THE COURT: HERE IS THE DISTINCTION:

7 CAN PARTIES IN THAT AGREEMENT CONFER JURIS-
8 DICTION ON THE COURT TO ENFORCE AN AGREEMENT, OR DOES THAT
9 NEED TO COME FROM AN ORDER SIGNED BY THE COURT?

10 I THINK THAT IF PARTIES CAN DO THAT, THEN WE
11 HAVE REALLY OPENED UP A NEW PANDORA'S BOX HERE.

12 MR. HERTZBERG: BUT I AM NOT SAYING THAT. I AM NOT
13 SAYING THE PARTIES CAN UNILATERALLY ON THEIR OWN CONFER
14 JURISDICTION ON THE COURT.

15 WHAT I AM SAYING IS THE PARTIES AGREED; IT WAS
16 THEIR INTENTION AND IT WAS REFLECTED THAT THE COURT DID
17 AGREE.

18 THE COURT: THE COURT READ IT AND THEN THE COURT SAID
19 IN AN ORDER OBVIOUSLY PREPARED FOR HIS SIGNATURE, THE COURT
20 SAID, "UPON CONSIDERATION OF THE PARTIES' STIPULATION FOR
21 DISMISSAL, THE MUTUAL RELEASE OF ALL CLAIMS AND SETTLEMENT
22 AGREEMENT AND THE ENTIRE RECORD HEREIN. IT IS ORDERED AND
23 ADJUDGED." I MEAN, YOU KNOW, HE OBVIOUSLY DIDN'T READ THE
24 MUTUAL RELEASE. IT WASN'T THERE. IT IS LIKELY HE DIDN'T
25 READ THE ENTIRE RECORD AND CONSIDER IT ON THIS DATE. SO
26 BASICALLY, THIS WAS A FORM ORDER THAT HE SIGNED. AND
27 IT DOESN'T SAY ANYTHING ABOUT RETAINING JURISDICTION.

28 WHAT IT DOES IS IT REFERS TO THE FACT -- IT

000601

1 GIVES YOU A GOOD PLACE TO ARGUE THAT HE READ AND CONSIDERED
2 ANOTHER DOCUMENT THAT WAS PRESENTED TO HIM THAT DAY AND THAT
3 IS THE JOINT STIPULATION OF DISMISSAL WHICH DOES SAY THAT
4 THE PARTIES AGREE THAT THIS COURT SHALL RETAIN JURISDICITON
5 AND MAY REOPEN THIS CASE AT ANY TIME FOR THE PURPOSE OF
6 ENFORCING SAID AGREEMENT, MEANING THE SETTLEMENT AGREEMENT.

7 NOW YOU ARE SAYING THAT THIS CONSTITUTES AN
8 ORDER BY JUDGE BRECKENRIDGE THAT THE COURT RETAINS JURIS-
9 DICTION.

10 I AM RESPECTFULLY DIFFERING ON THAT.

11 MR. HERTZBERG: YOUR HONOR, THERE ARE SEVERAL RESPONSES
12 TO THAT.

13 FIRST OF ALL, WE HAVE GIVEN YOU ALSO THE
14 MINUTE ORDER WHICH IS HARD TO IGNORE, IN MY VIEW, WHERE IT
15 IS MADE CLEAR, A MINUTE ORDER OF THE COURT, THAT THE COURT
16 RETAINS JURISDICTION TO ENFORCE A SETTLEMENT AGREEMENT.

17 THE COURT: I'M SORRY, BUT WE CAN'T GO BACK. WE HAVE
18 THE TRANSCRIPT OF THAT DAY. IT IS THE WHOLE TRANSCRIPT;
19 RIGHT?

20 MS. PLEVIN: YES.

21 MR. HERTZBERG: YES, THE TRANSCRIPT HAS NOTHING --

22 THE COURT: WHAT HAPPENS IN A COURT, AS WE ALL KNOW,
23 IS WE HAVE A REPORTER AND HE TRANSCRIBES EVERYTHING THAT IS
24 SAID AND THE CLERK, BASED ON THAT AND USUALLY BASED ON WHAT
25 THE JUDGE TELLS HER OR HIM TO PUT IN THE MINUTE ORDER PUTS
26 IT IN THE MINUTE ORDER AT THE CONCLUSION OF THE HEARING.
27 BUT BASICALLY THE BEST EVIDENCE OF WHAT HAPPENS IN THE FORMAL
28 HEARING IS THE REPORTER'S TRANSCRIPT.

000602

1 NOW, THE MINUTE ORDER IS A REFLECTION OF THE
2 CONCLUSION OF THE HEARING IN THE NORMAL COURSE OF EVENTS.
3 BUT WE DON'T FIND ANYTHING IN THE TRANSCRIPT WHICH CONTAINS
4 THE JUDGE ORDERING FROM THE BENCH THAT JURISDICTION SHALL
5 BE RETAINED TO ENFORCE THE AGREEMENT. SO IT IS REALLY NOT,
6 IN MY VIEW, AN ORDER OF THE COURT UNLESS THE JUDGE MAKES IT
7 FROM THE BENCH ON THE RECORD OR HE SIGNS A DOCUMENT.

8 MS. PLEVIN: IF I MAY ADDRESS THAT --

9 MR. HERTZBERG: I STILL HAVE THE FLOOR.

10 MS. PLEVIN: I HAVE A 60-SECOND COMMENT THAT I THINK
11 WOULD HELP CLARIFY THIS.

12 MR. HERTZBERG HAS MADE THE ASSUMPTION -- AND
13 I BELIEVE IT IS ONLY AN ASSUMPTION -- THAT THE COMMENT WHICH
14 HE POINTED TO ON PAGE 2, "I HAVE READ THE PROPOSED STIPU-
15 LATION," NECESSARILY RELATES, IN MR. HERTZBERG'S MIND, TO
16 THE JOINT STIPULATION OF DISMISSAL WHICH HAS THE LANGUAGE
17 ON WHICH THE MOVING PARTIES ARE RELYING.

18 BUT YOU WILL NOTE IN THAT VERY SECTION, HIS
19 COMMENTS, "THEN MOVE ON TO THE ISSUE OF THE SEALING ... "
20 I SUBMIT THAT IT IS MORE LIKELY THAT WHAT HE WAS REFERRING
21 TO AT THAT MOMENT WAS THE JOINT STIPULATION WITH RESPECT TO
22 THE SEALING.

23 THERE IS NO INDICATION THERE THAT THAT WAS THE
24 ONE HE WAS REFERRING TO. THE ONLY OTHER REFERENCE AT ALL,
25 THERE WAS NO DISCUSSION IN THIS TRANSCRIPT WHATSOEVER ABOUT
26 THE CONDITIONS ATTACHED OF THE KIND THEY ARE SEEKING TO
27 ENFORCE, INCLUDING THE CONDITION THAT THE ENTIRE SETTLEMENT
28 AGREEMENT BE MADE A COURT ORDER. THERE IS SIMPLY NO

000603

1 DISCUSSION, AS YOUR HONOR FULLY UNDERSTANDS.

2 MR. HERTZBERG: I'LL MOVE ON.

3 I WOULD JUST MAKE THIS OBSERVATION ABOUT THE
4 TRANSCRIPT. I THINK THIS COURT, ESPECIALLY WHEN THIS MINUTE
5 ORDER IS CONSISTENT WITH THE OTHER DOCUMENTS, I THINK THAT
6 THIS COURT HAS TO ASSUME THAT THE JUDGE SAID THAT AND THAT
7 WHOEVER PREPARED THIS MINUTE ORDER WHO, OF COURSE, IS AN
8 OFFICER OF SOME COURT, NOT ONE OF THE LAWYERS, DIDN'T INVENT
9 OUT OF WHOLE CLOTH THE STATEMENT THAT THE COURT WAS
10 RETAINING JURISDICTION.

11 IT IS POSSIBLE THAT JUDGE BRECKENRIDGE SAID
12 IT OFF THE RECORD.

13 IT IS POSSIBLE THAT THE TRANSCRIBER MISSED
14 THAT PORTION BECAUSE, AFTER ALL, THAT PARTICULAR HEARING HAD
15 TO DO WITH THE MECHANICS OF DEALING WITH THE SEALED DOCUMENTS.

16 MS. PLEVIN: THE ONLY THING WAS THE SETTLEMENT AGREEMENT.

17 MR. HERTZBERG: PLEASE, I DON'T WANT TO BE INTERRUPTED.
18 I DIDN'T INTERRUPT YOU.

19 THE COURT: MAYBE YOU SHOULD HOLD YOUR HAND UP.

20 MR. HERTZBERG: THAT IS CONSUMATE RUDENESS, YOUR
21 HONOR.

22 THE COURT: BUT WE WON'T LEAVE THAT UNCHALLENGED.

23 WHAT YOU ARE SAYING IS THAT JUDGE BRECKENRIDGE
24 MAY HAVE MADE AN ORDER TO THE CLERK NOT ON THE RECORD.

25 I SUGGEST TO YOU THAT IF HE DID THAT, HE WOULD
26 HAVE TO SIGN AN ORDER TO MAKE IT A COURT ORDER. THE CONVER-
27 SATION BETWEEN THE JUDGE AND THE CLERK AS TO WHAT GOES INTO
28 THE MINUTE ORDER DOES NOT CONSTITUTE A COURT ORDER AND

000604

1 ESPECIALLY WHEN YOU HAVE A TRANSCRIPT OF WHAT HAPPENED
2 DURING THE HEARING.

3 MR. HERTZBERG: I WANT TO MAKE TWO OTHER POINTS BEFORE
4 I MOVE ON ON THIS. ONE OF THEM IS THERE IS NO EVIDENCE
5 THAT JUDGE BRECKENRIDGE DID NOT HAVE THE AGREEMENT IN FRONT
6 OF HIM.

7 THE COURT IS MAKING A MAJOR FOCAL POINT OF THE
8 FACT THAT MINISTERIALLY THE SETTLEMENT AGREEMENT WAS NOT
9 FILED SUBSEQUENTLY WITH THE CLERK OF THE COURT. THAT DOES
10 NOT MEAN, AND THIS COURT CANNOT, IN OUR VIEW, CONCLUDE THAT
11 THE COURT DID NOT HAVE THE SETTLEMENT AGREEMENT IN FRONT OF
12 IT AND WAS NOT AWARE OF THE ENTIRETY OF ITS TERMS.

13 I JUST WANTED TO POINT OUT THAT JUST BECAUSE
14 WE DIDN'T FILE IT WITH THE CLERK DOES NOT MEAN THAT JUDGE
15 BRECKENRIDGE DIDN'T KNOW EVERY WORD THAT WAS IN THAT SETTLE-
16 MENT AGREEMENT.

17 THE COURT: IT DOES NOT MEAN THAT HE DID EITHER.

18 AND I'LL SAY THIS: THAT IN MY EXPERIENCE --
19 AND IT MAY NOT BE THE SAME AS EVERYBODY ELSE'S -- WHEN
20 PARTIES OR LAWYERS WANT A JUDGE TO ORDER THE PERFORMANCE OF
21 THE SETTLEMENT AGREEMENT, THEY BRING IT IN.

22 WITH THE LITTLE CRYPTIC PHRASE, "IT IS SO
23 ORDERED AT THE END OF THE AGREEMENT, THAT RAISES ALL SORTS
24 OF CONCERNS WITH ME. MAYBE EARLIER, 15 YEARS AGO, I MIGHT
25 HAVE DONE IT A COUPLE OF TIMES.

26 WHEN I REALIZED WHAT KIND OF PROBLEM THAT WAS,
27 I SIMPLY DON'T DO IT ANYMORE. IF THEY WANT AN ORDER OF SOME
28 OF THE TERMS, THEN I HAVE THEM SPELL OUT WHAT OF THE TERMS

000605

1 THEY CONSIDERED TO BE APPROPRIATE FOR THE COURT ORDER AND
2 THEN I GO OVER THEM AND SAY IS THIS REALLY SOMETHING THAT
3 IS THE BUSINESS OF THE COURT TO BE ORDERING AND ENFORCING
4 WITH CONTEMPT OR NOT?

5 AND I MAKE SURE THAT IT IS THE KIND OF CLEAR
6 AND CONCISE ORDER THAT CAN BE THE SUBJECT OF A CONTEMPT
7 PROCEEDING. SO MY BELIEF IS JUDGE BRECKENRIDGE, BEING A VERY
8 CAREFUL JUDGE, FOLLOWS ABOUT THE SAME PRACTICE AND IF HE HAD
9 BEEN PRESENTED THAT WHOLE AGREEMENT AND IF HE HAD BEEN ASKED
10 TO ORDER ITS PERFORMANCE, HE WOULD HAVE DUG HIS FEET IN
11 BECAUSE THAT IS ONE OF THE -- I HAVE SEEN -- I CAN'T SAY --
12 I'LL SAY ONE OF THE MOST AMBIGUOUS, ONE-SIDED AGREEMENTS I
13 HAVE EVER READ. AND I WOULD NOT HAVE ORDERED THE ENFORCEMENT
14 OF HARDLY ANY OF THE TERMS HAD I BEEN ASKED TO, EVEN ON THE
15 THREAT THAT, OKAY, THE CASE IS NOT SETTLED.

16 I KNOW WE LIKE TO SETTLE CASES. BUT WE DON'T
17 WANT TO SETTLE CASES AND, IN EFFECT, PROSTRATE THE COURT
18 SYSTEM INTO MAKING AN ORDER WHICH IS NOT FAIR OR IN THE
19 PUBLIC INTEREST.

20 SO BASICALLY, I HAVE TO CONCLUDE BASED ON THE
21 RECORD THAT THERE WAS NO ORDER; SIMPLY, HE WASN'T PRESENTED
22 THE ORDER. HE WAS NOT ASKED TO ORDER ITS PERFORMANCE. HE
23 DIDN'T ORDER ITS PERFORMANCE.

24 THE FIRST TIME THAT WOULD BE DONE WOULD BE IN
25 RESPONSE TO YOUR MOTION AT THIS TIME.

26 MR. HERTZBERG: JUDGE, LET ME RESPOND TO THAT.

27 FIRST OF ALL, I THINK YOUR HONOR KNOWS WE ARE
28 NOT CLAIMING THAT JUDGE BRECKENRIDGE SO ORDERED THE TERMS

000606

1 OF THE AGREEMENT. ALL WE ARE SAYING, AND WE ARE NOT ASKING
2 FOR CONTEMPT RULING FROM THIS COURT --

3 THE COURT: BUT WAIT A MINUTE. BECAUSE THAT IS A
4 DISTINCTION WITHOUT A DIFFERENCE.

5 IF HE HAD ORDERED THAT THE COURT RETAIN JURIS-
6 DICTION TO ENFORCE THE AGREEMENT, HE IS DOING THE SAME THING
7 BECAUSE HE IS SAYING BRING YOUR PROBLEMS TO ME; I WILL THEN
8 READ THE AGREEMENT; I WILL THEN DECIDE WHAT TO DO BY WAY OF
9 ENFORCING. AND IF THE AGREEMENT IS AMBIGUOUS, THEN HE HAS
10 PUT ON THE COURT THE CONCEPT OF, IN EFFECT, ENFORCING
11 THE AGREEMENT THAT HE, EVIDENTLY, HADN'T SEEN.

12 MR. YANNY: YOUR HONOR, I DON'T KNOW WHAT THE NATURE
13 OF YOUR PRIVATE PRACTICE WAS, BUT MINE HAS BEEN A LITTLE BIT
14 OF TRANSACTION AND A LITTLE BIT OF LITIGATION. ONE OF THE
15 THINGS THAT I HAVE FOUND, AND IT IS FAIRLY STANDARD IN
16 AGREEMENTS WHERE PARTIES ARE AGREEING TO DO A VARIETY OF
17 THINGS, INCLUDING JURISDICTION, THAT THEY AGREE TO PERSONAL
18 JURISDICTION OVER PARTIES.

19 AND THAT MAY VERY WELL HAVE BEEN WHAT WAS
20 CONTEMPLATED, AT LEAST, FROM MR. ARMSTRONG'S POINT OF VIEW.

21 HE DEPARTED THE JURISDICTION OF THIS COURT
22 AND --

23 THE COURT: WHAT IS YOUR POINT?

24 MR. YANNY: THE COURT MAY HAVE SIMPLY BEEN TRYING TO
25 SAY THAT EVEN THOUGH ACTION MAY HAVE OCCURRED OUTSIDE THE
26 JURISDICTION OF CALIFORNIA, THE PARTIES, BY WAY OF SETTLE-
27 MENT, MAY HAVE AGREED TO PERSONAL JURISDICTION AS OPPOSED
28 TO --

000607

1 THE COURT: THAT IS ONE OF THE PROBLEMS OF A CRYPTIC
2 STATEMENT IN AN AGREEMENT AND NOT IN AN ORDER. I DON'T
3 KNOW WHAT IT MEANT.

4 MR. HERTZBERG: I JUST WANT TO HAND ONE MORE DOCUMENT
5 UP TO YOU AND MAKE THIS PART OF THE RECORD.

6 MR. ARMSTRONG TOLD THE COURT OF APPEAL HE
7 THOUGHT LOS ANGELES SUPERIOR COURT RETAINED JURISDICTION.

8 MAY THE RECORD REFLECT THAT IN HIS APPELLATE
9 BRIEF TO THE COURT OF APPEAL DATED FEBRUARY 21ST, 1990 WITH
10 THE SIGNATURE OF GERALD ARMSTRONG BEGINNING AT THE BOTTOM
11 OF PAGE 2 AND THE TOP OF PAGE 3, THE TITLE IS "DEFENDANT'S
12 PETITION FOR PERMISSION TO FILE RESPONSE AND TIME TO FILE."

13 MR. ARMSTRONG SAYS "INTER ALIA, I'LL BE
14 ADDRESSING AS SOON AS POSSIBLE MY MOTION -- " HE IS NOW
15 TELLING THIS TO THE COURT OF APPEAL -- "OR OTHER APPROPRIATE
16 ACTION IN THE LOS ANGELES SUPERIOR COURT WHICH RETAINS
17 PURSUANT TO CLAUSE 20 OF THE SETTLEMENT AGREEMENT JURIS-
18 DICTION TO ENFORCE ITS TERMS."

19 THIS IS TO ANSWER A QUESTION, LEST THERE BE
20 ANY DOUBT AS TO WHAT MR. ARMSTRONG THOUGHT, WHAT JUDGE
21 BRECKENRIDGE'S UNDERSTANDING OR ANYONE ELSE'S UNDERSTANDING
22 OF THE CONTINUING ROLE OF THIS COURT.

23 NOW, I WANT TO MOVE ON.

24 MS. PLEVIN: WE CAN'T MOVE ON. I NEED TO RESPOND TO
25 THAT.

26 THE COURT: NOW WE'LL HEAR FROM MR. ARMSTRONG'S
27 COUNSEL.

28 MS. PLEVIN: ON THAT POINT, IT ONLY GOES TO THE

000608

1 CONCEPT THAT THE PARTIES ARE UNDER THE MISAPPREHENSION
2 THAT THEY COULD CONFER JURISDICTION BY MERELY PUTTING IT IN
3 THEIR SETTLEMENT AGREEMENT.

4 THAT IS THE ERRONEOUS CONCEPT UPON WHICH A
5 LOT OF THE MOVING PARTIES' ARGUMENTS SEEMS TO BE BASED.

6 MR. ARMSTRONG, NOT AN ATTORNEY WRITING THIS
7 IN PRO PER, HAD NO REASON TO QUESTION WHETHER IT WAS OR WAS
8 NOT THE LEGITIMATE EFFECT OF CONFERRING JURISDICTION.

9 THE COURT: YOU HAVE MADE YOUR POINT. I THINK IT IS
10 AN APPROPRIATE TIME -- TELL ME IF YOU ARE THROUGH ON THE
11 RETAINING JURISDICTION POINT; ARE YOU?

12 MR. HERTZBERG: YES.

13 THE COURT: NOW, I THINK YOU HAVE NOW BEEN WANTING TO
14 PUT YOUR POSITION FORWARD AS TO THE BASIS FOR JURISDICTION
15 OF THE COURT. AND I INITIALLY REFERRED TO 664.6 WHICH REFERS
16 TO --

17 MR. HERTZBERG: I HAVE ONE MORE POINT FOR THE RECORD.

18 I SAID YES PRECIPITOUSLY.

19 WE RELY NOT ONLY ON THE DOCUMENTS AND ARGUMENTS
20 MADE SO FAR, BUT ALSO ON THE INHERENT JURISDICTION OF THIS
21 COURT TO ENFORCE IN A SETTLEMENT AGREEMENT WHERE THERE IS
22 A CLAIM THAT THE PARTIES THAT WERE BEFORE THIS COURT
23 PROPERLY SETTLED THE CASE AND THERE HAVE BEEN BREACHES OF
24 THE KIND AND VIOLATIONS OF THE AGREEMENT OF THE KIND THAT
25 WE ALLEGE HERE AND THIS ARGUMENT STANDS APART AND SEPARATELY
26 FROM THE ARGUMENTS WE HAVE MADE PREVIOUSLY TO THE COURT
27 EXPLICITLY IN THESE VARIOUS DOCUMENTS WE HAVE BEEN DEBATING
28 ABOUT THAT IT HAD CONTINUING JURISDICTION.

000609

1 THE COURT: SO YOU ARE SAYING INDEPENDENT OF ANY ORDER,
2 THE COURT HAS AUTHORITY TO GO TO THE MOON?

3 MR. HERTZBERG: TO WHAT? I DIDN'T SAY THAT.

4 THE COURT: YOU ANSWERED BEFORE I FINISHED THE
5 QUESTION. SO, PLEASE, LISTEN CAREFULLY.

6 I THINK WHAT YOU ARE SAYING IS THE COURT HAS
7 INHERENT AUTHORITY INDEPENDENT OF ANY ORDER THAT IT HAS MADE
8 OR INDEPENDENT OF ANY ACTION THAT IS PENDING TO ENFORCE A
9 SETTLEMENT AGREEMENT THAT SAYS THAT THE COURT WOULD HAVE
10 JURISDICTION TO DO SO?

11 MR. HERTZBERG: THAT'S RIGHT. AND I WILL EVEN TAKE
12 AN ADDITIONAL POSITION; NOT ONLY THAT, BUT EVEN IF IT HADN'T
13 SAID IN THE AGREEMENT THAT THE COURT WAS RETAINING JURIS-
14 DICTION, THAT, FOR THE RECORD, WOULD BE OUR POSITION. BUT,
15 CERTAINLY, THE PARTIES HAVE SAID IT, YES.

16 THE COURT: THAT IS ALL, PRIVATE AGREEMENTS?

17 MR. HERTZBERG: SETTLEMENT AGREEMENT, YOUR HONOR,
18 NOT JUST A PRIVATE CONTRACT. THIS IS A SETTLEMENT OF LITI-
19 GATION THAT WAS PENDING BEFORE THIS COURT BY PARTIES THAT
20 WERE PROPERLY BEFORE THIS COURT.

21 THE COURT: SO IT IS ACTUALLY AN AGREEMENT THAT SETTLED
22 ALL OR A PORTION OF THE PENDING PIECE OF LITIGATION?

23 MR. HERTZBERG: ADDITIONALLY, SEPARATELY AND ESPECIALLY,
24 IF IT IS NOT EVERY AGREEMENT, ESPECIALLY WHERE THE PARTIES
25 HAVE AGREED THAT THE COURT SHALL HAVE CONTINUING JURISDICTION.

26 THE COURT: THAT IS A SUBJECT THAT 664.6 COVERS, IF
27 PARTIES TO PENDING LITIGATION STIPULATE IN WRITING, WHICH
28 THEY DID HERE, OR ORALLY BEFORE THE COURT, WHICH THEY DIDN'T

000610

1 DIDN'T HERE, FOR SETTLEMENT OF THE CASE OR PART THEREOF, THE
2 COURT, UPON MOTION, MAY ENTER JUDGMENT PURSUANT TO THE
3 TERMS OF THE SETTLEMENT.

4 MS. PLEVIN: LET ME ADDRESS THAT, YOUR HONOR.

5 I THINK THERE ARE SEVERAL FACTORS IN THAT
6 SECTION WHICH DETERMINES OR ARE QUITE CONCLUSIVE THAT THAT
7 DOES NOT APPLY TO THE PRESENT PROCEEDINGS AND THE SETTLEMENT
8 AGREEMENT AND IN THIS CASE.

9 NUMBER ONE, IT SAYS THAT THE COURT MAY ENTER
10 IT UPON MOTION.

11 NUMBER TWO, IT WILL BE ENTERED AS A JUDGMENT.

12 WE KNOW FROM THE TRANSCRIPT OF DECEMBER 11,
13 1986 SEVERAL THINGS; THAT WAS THE EXPLANATION TO THE COURT;
14 THAT WAS THE FORMALIZATION OF THE FACT THAT THIS WAS A
15 SETTLEMENT; IT WAS BRINGING TO JUDGE BRECKENRIDGE; DEAR
16 JUDGE, WE DON'T HAVE TO GO TO TRIAL; AREN'T YOU HAPPY?
17 LET ME OUT OF HERE.

18 AND IT WAS THE REVIEW OF THOSE UNIQUE ORDERS,
19 THE SEALING ORDER, THE ORDER WITH RESPECT TO THE RETURN OF
20 EXHIBITS AND SO FORTH THAT REQUIRED SPECIFICALLY THE COURT'S
21 ATTENTION THAT COULD NOT BE SUMMARILY DEALT WITH BY THE
22 PARTIES THEMSELVES.

23 THEY COULD SIGN A SETTLEMENT AGREEMENT THEM-
24 SELVES; THEY COULD FILE VOLUNTARY DISMISSALS; THEY DID NOT
25 HAVE TO COME TO COURT TO DO THAT.

26 THEY HAD TO COME TO COURT, HOWEVER, TO TAKE
27 CARE OF CERTAIN OTHER DETAILS THAT WERE PURPORTEDLY A PART
28 OF THE AGREEMENT. AND THEY DID SO. THERE WAS NO MOTION.

000611

1 IT WAS AN ANNOUNCEMENT TO THE COURT THIS IS WHAT WE HAVE;
2 WE HAVE A SETTLEMENT. THIS IS WHAT WE HAVE STIPULATED TO
3 AND, THUS, THE DECEMBER 11, 1986 TRANSCRIPT IS VERY, VERY
4 REVEALING.

5 THE COURT: WAIT. LET'S ASSUME THAT YOU ARE RIGHT
6 AND THAT THERE IS NO BASIS, FROM WHAT JUDGE BRECKENRIDGE
7 DID, FOR A CONTINUING JURISDICTION OF THE COURT TO ENFORCE
8 THE SETTLEMENT AGREEMENT AS CONTRASTED WITH DEALING WITH THE
9 SEALING AGREEMENT.

10 NOW, ALTHOUGH, FRANKLY, I GUESS THE SEALING
11 AGREEMENT IS A SPECIFIC TERM OF THE SETTLEMENT AGREEMENT,
12 BUT WE ARE DEALING WITH OTHER TERMS.

13 MS. PLEVIN: IT WAS A SEPARATE ORDER WITH RESPECT TO
14 SEALING.

15 THE COURT: LET'S ASSUME YOU ARE RIGHT ON THAT AND IN
16 1986 THAT CHAPTER WAS HARD AND CLOSED; NOW WE ARRIVE HERE
17 IN 1991. NOW THERE IS A MOTION AND THE MOTION SEEKS
18 ENFORCEMENT OF THE SETTLEMENT AGREEMENT.

19 I TAKE IT THE MOVING PARTY IS RELYING IN PART,
20 AT LEAST, ON 664.6.

21 MS. PLEVIN: I DON'T BELIEVE SO, YOUR HONOR. I DON'T
22 BELIEVE IT WAS IN THEIR PAPERS AT ALL. THEY RELY IN THEIR
23 PAPERS ON --

24 MR. HERTZBERG: WE DO RELY ON IT, YOUR HONOR.

25 MS. PLEVIN: AS A RESULT OF THE COMMENTS THIS MORNING,
26 IT WAS NOT IN THEIR PAPERS.

27 127(A)4 GIVES THE COURT THE INHERENT JURIS-
28 DICTION TO ENFORCE AN ORDER AND JUDGMENT AND PROCESS. THAT

000612

1 IS THE SECTION ON WHICH THE MOVING PARTIES RELIED IN THEIR
2 MOVING PAPERS, YOUR HONOR. THAT IS THE SECTION WITH WHICH
3 THEY REFERRED TO THAT EXHIBIT Q WHICH IS THE ORDER DISMISSING
4 ACTION AND, OF COURSE, THAT IS NOT APPLICABLE BECAUSE THERE
5 WAS NO ADOPTING OF THE TERMS OF THE SETTLEMENT AGREEMENT AS
6 AN ORDER OF THE COURT. IF THERE IS ANYTHING THAT IS CLEAR,
7 THAT IS CLEAR.

8 AND THAT ALSO GOES TO THE SECOND PART OF WHAT
9 I WANTED TO SAY AND THAT IS THAT 664.6, 'FOR LIKE REASON,
10 CANNOT APPLY.

11 LET ME REFER THE COURT TO DATASTRONIC SYSTEMS
12 CORPORATION VS. SPERON, INC. 176 CAL. APP. 3D. 1186, 222
13 CAL. REPORTER 658, A SECOND DISTRICT OPINION, 1986.

14 AND IN THIS DECISION, DIRECTED SOLELY AND
15 SPECIFICALLY TO THE APPLICATION OF 664.6, THE COURT NOTED
16 QUOTING ANOTHER CASE CORKLAND VS. BOSCOE, THAT ACTING UPON
17 A SECTION 664 AGREEMENT, IT MUST BE BY MOTION AND THEN,
18 "THE TRIAL COURT MUST DETERMINE WHETHER PARTIES ENTERED INTO
19 A VALID AND BINDING SETTLEMENT OF ALL OR PART OF THE CASE.
20 IN MAKING THIS DETERMINATION, TRIAL JUDGES MAY RECEIVE ORAL
21 TESTIMONY OR MAY DETERMINE THE MOTION UPON DECLARATIONS
22 ALONE."

23 IT IS OBVIOUS THAT DOES NOT APPLY HERE. THERE
24 WAS NO MOTION BEFORE THE COURT TO REDUCE THE SETTLEMENT
25 AGREEMENT INTO JUDGMENT.

26 THE COURT: BUT WE HAVE NONE NOW. WE HAVE A MOTION
27 NOW TO ENFORCE THE SETTLEMENT.

28 MS. PLEVIN: UNLESS THE COURT RETAINED JURISDICTION

000613

1 IN 1986, THERE ARE NO PROCEEDINGS FOR THE COURT NOW TO OPEN
2 UP THE ISSUE OF WHETHER TO ENTER IT AS A JUDGMENT.

3 IT HAS TO BE PENDING LITIGATION, YOUR HONOR.
4 IF YOU LOOK AT 664.6, IT REQUIRES THAT THE PARTIES MUST --
5 IF PARTIES TO PENDING LITIGATION STIPULATE, ACCORDINGLY, IT
6 APPLIES ONLY AT THE TIME; THAT IS CURRENT LITIGATION.

7 THE COURT: SEE IF THIS ISN'T A LOGICAL READING OF
8 664.6:

9 "IF THE PARTIES TO LITIGATION WHILE
10 IT IS PENDING STIPULATE IN WRITING FOR SETTLEMENT
11 OF THE CASE, THE COURT, UPON MOTION AT ANY TIME,
12 MAY ENTER JUDGMENT OR ORDER PURSUANT TO THE TERMS
13 OF THE STIPULATION."

14 NOW, I HAVE ADDED "OR ORDER"; IN OTHER WORDS,
15 IT IS FAIRLY STANDARD THAT THE PARTIES WILL ENTER INTO A
16 STIPULATION, FOR EXAMPLE, THE CASE IS SETTLED; WE AGREE TO
17 TAKE \$100,000, \$10,000, YOU KNOW, DOWN AND SO MUCH OVER A
18 PERIOD OF TIME AND THEN IF YOU DON'T PAY, JUDGMENT WILL BE
19 ENTERED IN THIS AMOUNT OR THAT AMOUNT.

20 AND THEN THE CASE IS DISMISSED OR, ACTUALLY,
21 IF THERE IS A QUESTION WHETHER THE CASE IS REALLY DISMISSED
22 UNDER THE SITUATION, IT IS USUALLY --

23 MS. PLEVIN: EXACTLY.

24 THE COURT: YOU ARE SAYING THAT IF A JUDGMENT IS
25 ENTERED OR A DISMISSAL IS ENTERED, THEN --

26 MS. PLEVIN: IT TERMINATES THE PROCEEDING AND THERE
27 IS NO PENDING LITIGATION.

28 IN YOUR SCENARIO, YOUR HONOR, THE DISMISSAL

000614

1 IS NOT GOING TO BE FILED UNTIL THE JUDGMENT IS COMPLETELY
2 PAID OR THE SETTLEMENT AGREEMENT IS COMPLETELY PAID. AT
3 THAT POINT THE DISMISSAL IS FILED AND THERE IS NO PENDING
4 LITIGATION.

5 THE COURT: I GUESS THE OTHER POINT YOU ARE MAKING
6 IS IF THE CASE IS DISMISSED, YOU CAN'T HAVE A JUDGMENT.

7 MS. PLEVIN: CORRECT.

8 THE COURT: YOU SIMPLY CAN'T HAVE A JUDGMENT AFTER A
9 DISMISSAL.

10 MS. PLEVIN: THAT IS CORRECT.

11 NOW, MY ARGUMENT AND MY THEORY ABOUT THIS
12 THAT I THINK IS GROUNDED IN THIS CASE AND IN OTHERS IS
13 BACKED UP BY THE ANALYSIS GIVEN IN THE FEW CASES THAT EXIST
14 ON 664.6 AND I BELIEVE, ALSO, THE NOTES IN THE ANNOTATIONS
15 WHICH WENT TO THE ISSUE THAT THIS WAS PROVIDED -- THIS WAS
16 ENACTED SPECIFICALLY BECAUSE WHEN THE PARTIES TO A SETTLEMENT
17 AGREEMENT WHICH REQUIRED, TYPICALLY, THE PAYMENT OF MONEY
18 IN EXCHANGE FOR THE DISMISSAL AND SO FORTH, DID NOT ACTUALLY
19 FOLLOW THROUGH ON THAT, HOW DID THE PARTIES ENFORCE THE
20 SETTLEMENT AGREEMENT. AND IT ANTICIPATED THAT WE ARE
21 DEALING WITH THE RESOLUTION OF THE PENDING LITIGATION PRIOR
22 TO THE ENTRY OF DISMISSAL. I THINK THAT IS VERY CLEAR IN THE
23 HISTORY AND QUITE CLEAR ALSO IN THE LANGUAGE.

24 IT BEGS LINGUISTIC LOGIC TO TALK ABOUT ON THE
25 ON THE HAND THAT THE LITIGATION MUST BE PENDING AND ON THE
26 OTHER HAND, TO COME IN FIVE, TEN YEARS LATER AND SAY OH,
27 NOW WE WANT TO REDUCE IT TO A JUDGMENT. YOU CAN'T.

28 THE COURT: I THINK A BETTER WAY TO MAKE THE POINT IS

000615

1 THAT IF A SETTLEMENT AGREEMENT CALLS FOR A JUDGMENT TO BE
2 ENTERED, THEN UNLESS THE JUDGMENT IS ENTERED, IT IS PENDING
3 AND 664.6 APPLIES.

4 BUT IF THE SETTLEMENT AGREEMENT CALLS FOR A
5 DISMISSAL AND THE CASE IS THEN DISMISSED, THEN HOW CAN YOU
6 HAVE A JUDGMENT?

7 YOU CAN READ THIS SECTION AS SAYING YOU CAN
8 STILL HAVE AN ORDER; IN OTHER WORDS, THE AGREEMENT MIGHT
9 CALL FOR A DISMISSAL. AND THE CASE MIGHT BE DISMISSED. BUT
10 THE AGREEMENT, HAVING BEEN ENTERED INTO WHILE THE CASE WAS
11 PENDING, THEN THE COURT UNDER 664 COULD ISSUE AN ORDER
12 ENFORCING, YOU KNOW, THE LATER PAYMENT OF THE MONEY OR
13 WHATEVER.

14 NOW, ONE OF THE PROBLEMS THAT WE OPEN UP
15 IS THE KIND OF PROBLEM THAT WE ARE NOW DEALING WITH HERE;
16 THAT YOU COULD HAVE ALL SORTS OF PROVISIONS IN THOSE SETTLE-
17 MENT AGREEMENTS SUCH AS CONFIDENTIALITY, NOT A SEALED COURT
18 RECORD, BUT EVERYBODY WILL MAINTAIN EVERYTHING CONFIDENTIAL;
19 NEVER GIVE A PRESS RELEASE; I'LL DO MY BEST TO GET YOU A JOB
20 ELSEWHERE, LOTS OF THINGS THAT A PARTY CAN COME INTO COURT
21 AND SAY WE ENTERED INTO THE SETTLEMENT; PAID \$10,000;
22 DISMISSED THE CASE. THE PLAINTIFF DISMISSED THE CASE, BUT
23 LOOK AT THE FOURTH PAGE IN THE FIFTH PARAGRAPH; THEY NEVER
24 DID THAT, JUDGE. SO WE DON'T NEED TO GO TO COURT AND FILE
25 AN ACTION UNDER 664.

26 MS. PLEVIN: THEY ARE BARRED. IT IS NO LONGER PENDING.

27 THE COURT: MY POINT IS UNDER 664, IF WE READ IT IN
28 EFFECT THE WAY THE MOVING PARTY IS READING IT, THEN WE ARE

000616

1 OPENING UP A WHOLE NEW AREA HERE OF JUDICIAL HEARINGS WHERE
2 THERE IS NO RIGHT TO A JURY, FOR EXAMPLE, AND --

3 MS. PLEVIN: AS IN THIS CASE.

4 MR. YANNY: THE PUBLIC DOES NOT HAVE ACCESS.

5 THE COURT: SO BASICALLY, I AM CONCLUDING, I THINK,
6 THAT 654.6 DOES NOT GRANT THIS COURT JURISDICTION OVER MR.
7 ARMSTRONG PERSONALLY OR JURISDICTION TO, QUOTE, ENFORCE THE
8 AGREEMENT; NOR DOES 127(A)4 IN THAT THERE NEVER WAS AN ORDER
9 BY JUDGE BRECKENRIDGE REQUIRING THE PARTIES TO PERFORM THE
10 AGREEMENT.

11 MY BELIEF IS THAT HAD HE BEEN ASKED TO DO SO,
12 HE WOULD HAVE DECLINED EVEN ON PAIN OF HAVING THE SETTLEMENT
13 BLOW UP BECAUSE THAT IS JUST ANOTHER FOUR LAWSUITS WAITING
14 TO HAPPEN, IN MY EXPERIENCE, WHEN YOU HAVE AN AGREEMENT
15 LIKE THIS.

16 MR. HERTZBERG: I TAKE IT YOUR HONOR IS DENYING OUR
17 MOTION, THEN, ON THE BASIS OF LACK OF JURISDICTION?

18 THE COURT: I THINK THAT IS WHAT IT COMES DOWN TO.

19 SO THE MINUTE ORDER WILL SHOW THAT THE MOTION
20 IS DENIED.

21 MR. YANNY: THERE IS ONE OTHER MATTER, YOUR HONOR.

22 THE COURT: THIS FIRST MOTION IS DENIED ON THE BASIS
23 THAT JUDGE BRECKENRIDGE DID NOT SIGN AN ORDER OR MAKE AN
24 ORDER REQUIRING THE PARTIES TO PERFORM THE DOCUMENT ENTITLED
25 "MUTUAL RELEASE OF ALL CLAIMS AND SETTLEMENT AGREEMENT";
26 NOR DID JUDGE BRECKENRIDGE SIGN ANY ORDER RESERVING JURIS-
27 DICTION INS THE COURT IN THIS CASE TO ENFORCE SAID AGREEMENT.

28 THE COURT IS AWARE THAT THE PARTIES STIPULATED

000617

1 IN THERE, QUOTE, JOINT STIPULATION OF DISMISSAL, END QUOTE,
2 PAGE 2, LINES 5 AND 6, QUOTE, THIS COURT SHALL RETAIN
3 JURISDICTION AND MAY REOPEN THIS CASE AT ANY TIME FOR THE
4 PURPOSE OF ENFORCING SAID AGREEMENT, END QUOTE.

5 AND, FURTHER, IT APPEARS THAT JUDGE BRECKEN-
6 RIDGE MAY HAVE BEEN AWARE OF THAT AGREEMENT BETWEEN THE
7 PARTIES; BUT IT NEVERTHELESS, APPEARS THAT JUDGE BRECKEN-
8 RIDGE WAS NOT ASKED TO AND DID NOT ORDER THE PARTIES TO
9 PERFORM THE AGREEMENT; NOR DID HE ORDER CONTINUING JURIS-
10 DICTION AS THE PARTIES EVIDENTLY DESIRED HIM TO DO.

11 THE MOVING PARTY ASSERTS THAT THIS COURT HAS
12 JURISDICTION TO GRANT THIS MOTION PURSUANT TO CCP 127(A)4.

13 ARE YOU RELYING ON CCP 127(A)4?

14 MR. HERTZBERG: AND ALSO 664.6.

15 THE COURT: WE'LL GET TO THAT IN A MINUTE.

16 DO YOU HAVE IT THERE? MAY I SEE IT?

17 MR. HERTZBERG: WE HAVE IT IN TWO PLACES. WE HAD IT
18 MISCITED, YOUR HONOR, IN ONE PAPER.

19 MS. PLEVIN: THE TEXT OF 127(A)4, YOUR HONOR, IS ON
20 PAGE 2 OF MR. ARMSTRONG'S SUPPLEMENTAL OPPOSITION TO THE
21 JURISDICTIONAL ISSUE.

22 MR. HERTZBERG: I THINK WE CITED IT AS -- I BELIEVE
23 THIS IS THE CORRECT TEXT.

24 THE COURT: THAT IS WHAT THREW ME A LITTLE BIT.

25 SO YOU CITED IT AS 128(A)4; IN ANY EVENT, IT
26 PROVIDES EVERY COURT 'SHALL HAVE THE POWER TO DO ALL THE
27 FOLLOWING ... "

28 SO BACK IN THE MINUTE ORDER; HOWEVER, IT

000618

1 REALLY IS 128(A)4. SO MAKE THAT 128(A)4; HOWEVER, CCP
2 128(A)4 RELATES TO COMPELLING OBEDIENCE TO ITS JUDGMENTS,
3 ORDERS AND PROCESS. AND AS INDICATED, THERE IS NO SUCH
4 JUDGMENT OR ORDER HEREIN.

5 DURING THE PROCEEDINGS MOVING PARTY ALSO
6 RELIED UPON SECTION 664.6 OF THE CODE OF CIVIL PROCEDURE;
7 HOWEVER, IT APPEARS THAT ON DECEMBER 11, 1986 THIS ACTION
8 WAS DISMISSED WITH PREJUDICE. THEREFORE, THIS COURT LACKS
9 JURISDICTION UNDER 664.6 OF THE CODE OF CIVIL PROCEDURE
10 SINCE THIS SECTION CEASES TO BE A JURISDICTIONAL BASIS AFTER
11 ENTRY OF JUDGMENT OR JUDGMENT OF DISMISSAL FOR THE REASONS
12 AND ON THE GROUNDS SET FORTH IN THE NOTES OF THE OFFICIAL
13 COURT REPORTER.

14 NOW, TURNING TO THE YANNY MOTION.

15 MR. HERTZBERG: I JUST WANTED THE RECORD TO REFLECT
16 THAT WE OBJECT TO THIS GROUND FOR DENYING THE MOTION, FOR
17 DISMISSING THE MOTION, JUST FOR THE RECORD SO THE RECORD IS
18 ABSOLUTELY CLEAR.

19 THE COURT: ALSO ON CALENDAR THE MOTION OF JOSEPH A.
20 YANNY FOR LEAVE TO INTERVENE IN THE PENDING ACTION AND FOR
21 ACCESS TO SEALED FILES.

22 I AM GOING TO CONSIDER THIS NOT AS A MOTION
23 TO INTERVENE AS A PARTY PLAINTIFF OR DEFENDANT, BUT A MOTION
24 SEEKING ACCESS TO DOCUMENTS SEALED UNDER COURT ORDER.

25 AND THAT ELIMINATES A LOT OF THE ARGUMENT
26 AS TO THE TECHNICALITIES OF FILING OF A COMPLAINT IN INTER-
27 VENTION AS SUCH.

28 ACTUALLY, IN YOUR PAPERS, MR. YANNY, YOU ALSO

000619

1 ARGUE THAT YOU WANT TO INTERVENE FOR THE PURPOSES OF ARGUING
2 ON MR. ARMSTRONG'S BEHALF AGAINST AN INJUNCTION OR DAMAGES.
3 AND I AM DISREGARDING THAT BECAUSE IT IS MOOT IN VIEW OF THE
4 RULING IN THE ENTIRE MOTION.

5 MR. YANNY: JUST FOR THE RECORD, TO ARGUE ON MY OWN
6 BEHALF TO BLOCK GRANTING OF AN INJUNCTION AGAINST MR.
7 ARMSTRONG BECAUSE IT WOULD HAVE A SUBSTANTIAL EFFECT ON MY
8 ABILITY TO GET EVIDENCE OR TO TALK TO OR ASSOCIATE --

9 THE COURT: I WON'T FURTHER CHARACTERIZE IT. YOU CAN
10 ARGUE THAT ELSEWHERE, MEANING EVIDENTALLY BEFORE JUDGE
11 CARDENAS, MAYBE.

12 NOW, YOU DO MAKE ONE OTHER ARGUMENT OTHER THAN
13 THE SEALED DOCUMENTS AND THAT IS THAT YOU WANT TO IN EFFECT
14 HAVE A CLARIFICATION OF THE AGREEMENT; THAT HE NEED NOT
15 ABIDE BY IT BECAUSE ABIDING BY IT PREVENTS YOU FROM GATHERING
16 EVIDENCE.

17 AND I SUGGEST TO YOU THAT THAT IS NOT CORRECT
18 IN THAT HAVING READ THE AGREEMENT, YOU ARE FREE TO SUBPOENA
19 HIM AND TO DEPOSE HIM WITHOUT HIM VIOLATING THE AGREEMENT.

20 MR. DRESCHER: I WANTED TO NOTE FOR THE COURT IN THAT
21 REGARD THAT MR. ARMSTRONG IS ALREADY UNDER SUBPOENA IN THE
22 AZNARAN CASE. THE DEPOSITION HAS BEEN ORDERED BY JUDGE
23 CARDENAS TO BE CONCLUDED BY THE END OF THE MONTH.

24 THE COURT: VERY GOOD. SO THE ONLY THING BEFORE THE
25 COURT AND COUNSEL IN THIS MOTION IS MR. YANNY'S OVERTURE TO,
26 IN EFFECT, UNSEAL THE FILE. AND I HAVEN'T SEEN ANYTHING IN
27 YOUR PAPERS EITHER IDENTIFYING OR EVEN -- WHICH MIGHT BE
28 DIFFICULT, SINCE YOU DON'T KNOW WHAT IS IN THERE.

000620

1 MR. YANNY: YES, JUDGE.

2 THE COURT: BUT EVEN SHOWING THAT THERE LIKELY IS
3 SOMETHING IN THE FILE THAT WOULD EVEN POSSIBLY ASSIST YOU
4 IN THIS CASE WHEREIN THE CHURCH IS PROCEEDING AGAINST YOU
5 IN ANOTHER CASE --

6 MR. YANNY: YOUR HONOR, IF I MIGHT ADDRESS THE POINT
7 IN ORDER, FIRST OF ALL, I APPRECIATE THE FACT THAT I DO HAVE
8 THE OPPORTUNITY TO SUBPOENA MR. ARMSTRONG. BUT IT IS MY
9 PROPOSITION THAT I DON'T HAVE TO. AND I SHOULD NOT BY WAY
10 OF PRIVATE AGREEMENT BETWEEN PARTIES BE BOUND TO SEEK A
11 SUBPOENA IN ORDER TO SIT DOWN AND PREPARE MY CASE, TO
12 GATHER EVIDENCE, TO SIT DOWN WITH WITNESSES WHO HAVE INFOR-
13 MATION AND TO DEBRIEF THEM IN PRIVATE, IF NEED BE, IF I
14 WANT TO.

15 I DON'T NEED TO BE IN A SITUATION WHERE I HAVE
16 PLAINTIFF'S COUNSEL STARING OVER MY SHOULDER AS I PREPARE
17 MY CASE.

18 I DON'T NEED TO DO THAT. AND I THINK IT IS
19 UNFORTUNATE.

20 THE COURT: BUT, YOU SEE, YOU HAVE HEARD MY ANALYSIS
21 AND CONCLUSION THAT I HAVE NO JURISDICTION OVER THAT AGREE-
22 MENT.

23 MR. YANNY: BUT THE COMMENTS THAT YOU MADE ON THE
24 RECORD COULD PERHAPS BE -- I HEAR WHAT YOUR HONOR IS SAYING
25 WITH RESPECT TO THAT AGREEMENT, BUT THE UNFORTUNATE PART IS
26 THE COURT MAY BE DOING THIS IN LIGHT OF ME, PURE AND SIMPLE,
27 BUT SETTING A PRECEDENT THAT COULD BE APPLIED TO OTHERS.

28 THE COURT: NO. LET ME SAY THAT AS LONG AS THIS CASE

000621

1 IS PENDING BEFORE ME, I WILL ENTERTAIN, AS I DO IN ANY CASE
2 WHERE THERE IS A SEALING ORDER, ANY MOTION BY ANY LEGITI-
3 MATELY INTERESTED PARTY TO PARTIALLY OR WHOLLY UNSEAL THE
4 RECORD.

5 I HAVE INDICATED THAT PARTIALLY UNSEALING A
6 RECORD IS A STICKY BUSINESS. BUT THAT IS WHAT HAS HAPPENED
7 HERE.

8 BUT ANY RULING I MAKE ON YOUR MOTION WILL HAVE
9 NO PRECEDENTIAL EFFECT ON ANYONE ELSE SEEKING TO UNSEAL THE
10 RECORD IN ANY DEGREE.

11 MR. YANNY: IF I MAY FINISH BEFORE --

12 THE COURT: LET'S GO TO THE NEXT POINT. THAT POINT HAS
13 BEEN --

14 MR. YANNY: YOUR HONOR, WITH RESPECT TO HAVING TO
15 SUBPOENA MR. ARMSTRONG, I SHOULDN'T HAVE TO; NEITHER SHOULD
16 I HAVE TO --

17 THE COURT: LET'S GET TO THE DOCUMENTS BECAUSE THERE
18 ARE TWO POINTS -- THREE.

19 A, YOU HAVE DONE IT AND, SECONDLY, A LOT OF
20 TIMES YOU HAVE TO DO IT AND YOU DON'T HAVE TO HAVE A
21 CONSTITUTIONAL GUARANTEE TO BE ABLE TO INTERVIEW PEOPLE
22 AND, THIRD, IT IS BEYOND MY JURISDICTION.

23 MR. YANNY: THE DOCUMENTS WHICH ARE STILL WITHIN THE
24 COURT'S JURISDICTION, I WOULD LIKE TO POINT OUT TO THE COURT
25 THAT THE COURT WAS QUITE ASTUTE IN POINTING OUT THAT IT IS
26 VERY DIFFICULT FOR YOU TO PERHAPS GET, OR FOR ME TO SPECI-
27 FICALLY SPELL OUT WHICH DOCUMENTS, IF ANY, THAT I MIGHT
28 WANT WITH RESPECT TO THE PRESENTATION OF MY OWN DEFENSE

000622

1 SINCE THE FILE IS SEALED AND I DON'T HAVE ACCESS TO IT;
2 HOWEVER, IF YOUR HONOR WILL LOOK AT THE EXHIBITS SUBMITTED
3 WHICH WERE THE COMPLAINT AND THE ANSWER IN THIS CASE, YOU
4 WILL SEE THAT I AM SUED FOR BREACHING MY FIDUCIARY DUTIES
5 BY MY FORMER COUNSEL BECAUSE I REPORTEDLY REPRESENTED MR.
6 ARMSTRONG VIS-A-VIS THE ORGANIZATION SCIENTOLOGY.

7 AND THAT RELATES DIRECTLY TO THIS LAWSUIT.

8 NOW, I CAN'T GET INTO THE FILES OF THIS LAW-
9 SUIT TO SHOW WHAT THIS LAWSUIT WAS ABOUT, TO SHOW HOW I
10 DIDN'T REPRESENT MR. ARMSTRONG; I DIDN'T REPRESENT THE
11 ORGANIZATION VIS-A-VIS MR. ARMSTRONG; TO EXPLAIN THAT WHICH
12 THEY HAVE ALREADY PUT INTO EVIDENCE IN THE YANNY I, WHICH
13 WERE THE BILLS WITH RESPECT TO MY WORK FOR SCIENTOLOGY AND
14 WHAT ALL OF THAT MEANT; BECAUSE I DON'T HAVE THOSE FILES,
15 THAT IS NOT AVAILABLE TO ME.

16 THE COURT: IS SOMEBODY CHARGING YOU WITH REPRESENTING
17 MR. ARMSTRONG IN THIS CASE?

18 MR. YANNY: IF YOU TAKE A LOOK AT THE COMPLAINT, YOUR
19 HONOR, WHICH I HAVE SUBMITTED, IT IS AN EXHIBIT; I AM
20 CHARGED WITH REPRESENTING MR. ARMSTRONG.

21 THE COURT: IN THIS CASE?

22 MR. DRESCHER: ABSOLUTELY NOT, YOUR HONOR.

23 MR. YANNY: I AM PERSONALLY CHARGED WITH REPRESENTING
24 MR. ARMSTRONG VIS-A-VIS THIS ORGANIZATION.

25 MR. DRESCHER: BUT NOT THIS CASE. THAT WAS THE COURT'S
26 QUESTION.

27 THE COURT: WHICH PARAGRAPH, MR. YANNY?

28 MR. YANNY: I DON'T HAVE IT IN FRONT OF ME.

000623

1 MR. DRESCHER: YOU TOLD HIM IT WAS THIS CASE. WHY
2 DON'T YOU TELL HIM WHERE IT SAYS THAT?

3 MR. YANNY: ANOTHER THING, MY FILE WAS STOLEN A FEW
4 NIGHTS AGO.

5 MR. DRESCHER: MR. YANNY HAS A CASE IN FRONT OF JUDGE
6 CARDENAS. THE SUBJECT MATTER OF THAT LAWSUIT BEGAN IN THE
7 SUMMER OF 1991 WHEN IT WAS FOUND THAT MR. YANNY, WHO WAS
8 PAID \$2.1 MILLION TO REPRESENT THE CHURCH AND HE IS NOW
9 REPRESENTING AZNARAN. HE IS ENJOINED FROM REPRESENTING THEM
10 DIRECTLY OR INDIRECTLY.

11 HE ADMITTED IN MR. ARMSTRONG'S PRESENCE TO
12 ANOTHER CHURCH COUNSEL THAT HE WAS REPRESENTING HIM,
13 ALTHOUGH HE SAYS IT IS MATTERS UNRELATED TO THE CHURCH.
14 STILL, IT IS 1990, 1991 --

15 THE COURT: UNLESS YOU CAN SHOW SOME ALLEGATION IN THE
16 COMPLAINT AGAINST YOU THAT WOULD GIVE RISE TO THE RELEVANCE
17 OF ANY MATERIAL IN THIS SEALED FILE, I THINK I MUST DENY
18 THIS MOTION.

19 MR. YANNY: I MAY HAVE --

20 MR. DRESCHER: LET ME ADD THE FOLLOWING BECAUSE IT IS
21 PERTINENT TO THE COURT'S QUESTION TO MR. YANNY.

22 THE ARMSTRONG CASE WAS SEALED MANY YEARS AGO.
23 MR. YANNY IS NOW UNDER AN INJUNCTION ISSUED BY JUDGE
24 CARDENAS CONCERNING THE CASE THAT IS BEFORE JUDGE CARDENAS
25 ARISING FROM ACTIVITIES THIS YEAR, JUNE, JULY OF THIS YEAR.
26 AT WORST, IT GOES BACK TO THE SUMMER OF 1990 WHEN JUDGE
27 CARDENAS ENTERED HIS JUDGMENT IN THE YANNY I CASES.

28 THESE JUDGMENTS WERE SEALED IN 1985. THEY CAN

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1 HAVE NOTHING TO DO WITH THAT WHICH STARTED A YEAR AGO AT
2 MOST, MORE LIKELY SIX MONTHS AGO. THEY SIMPLY CAN'T.

3 THERE IS ONE OTHER POINT THAT IS CORRELARY TO
4 IT BECAUSE YOUR HONOR MENTIONED THE CORYDON MATTER THIS
5 MORNING IN WHICH CORYDON, REPRESENTED BY MISS PLEVIN, SOUGHT
6 TO HAVE ACCESS TO SEALED FILES IN THIS CASE; GOT LIMITED
7 ACCESS ON A LIMITED BASIS.

8 THAT WAS AFFIRMED. BUT BEFORE THE COURT EVER
9 DID ANYTHING WITH REGARD TO THAT, THERE WAS A RELEVANCE
10 SHOWING THAT WAS REQUIRED; IN FACT, THE COURT REQUIRED THAT
11 THE RELEVANCE OF THE DOCUMENTS TO MR. CORYDON BE FOUND BY
12 THE JUDGE IN THE CORYDON CASE.

13 JUST AS HE HAS DONE THROUGHOUT, MR. YANNY
14 IS TRYING TO MAKE AN END RUN AROUND JUDGE CARDENAS. THE
15 RELEVANCE OF WHATEVER MR. YANNY SEEKS IS REVELANT IN THAT
16 CASE.

17 IT IS JUDGE CARDENAS WHO KNOWS THE FACTS.
18 IT IS JUDGE CARDENAS WHO UNDERSTANDS THE INJUNCTION AND HE
19 UNDERSTANDS THE CLAIMS.

20 THE COURT: IN THE CORYDON MATTER THERE WAS A
21 POSSIBLE PRIVILEGE. AND I DECIDED THAT THE JUDGE IN THE
22 CORYDON CASE SHOULD DECIDE WHETHER OR NOT IT WAS DISCOVERABLE.
23 AND I SAID IT WAS DISCOVERABLE; THEN IT WAS UNSEALED.

24 MR. DRESCHER: RELEVANCE UNDER THE LIMITED PURPOSE --

25 THE COURT: RELEVANCE IS TOO NARROW. THAT GOES TO THE
26 NCS TAPES.

27 MR. YANNY: YOUR HONOR, THE FACT OF THE MATTER IS I
28 AM ACCUSED OF REPRESENTING MR. ARMSTRONG. THERE IS NO

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1 SPECIFIC REFERENCE VIS-A-VIS THIS ORGANIZATION. THE ONLY
2 LITIGATION I KNOW OF BETWEEN GERALD ARMSTRONG AND THIS
3 ORGANIZATION WAS BEFORE THIS GOOD COURT ON THIS GOOD DAY AND
4 THE APPEAL THAT WAS TAKEN THEREFROM.

5 I CANNOT DEFEND MYSELF ADEQUATELY UNLESS I
6 GET ACCESS TO THOSE FILES.

7 THERE IS NO RECITATION OF WHICH CASE IN THIS
8 COMPLAINT. IF THEY WANT TO DRAFT IT THAT WAY, THAT IS THEIR
9 PROBLEM.

10 YOUR HONOR, I AM ACCUSED OF REPRESENTING
11 GERALD ARMSTRONG --

12 THE COURT: WHAT PARAGRAPH?

13 MR. YANNY: BEGINNING WITH THE -- WELL, THE FIRST
14 CAUSE OF ACTION, IT SAYS, "LOS ANGELES SUPERIOR COURT C4 -- "

15 THE COURT: PLEASE, DON'T SAY ANOTHER WORD.

16 WHAT PARAGRAPH?

17 MR. YANNY: PARAGRAPH 16, " ... YANNY WAS ACTUALLY
18 ENGAGED IN LITIGATION IN THE MATTER OF THE CHURCH OF
19 SCIENTOLOGY V. GERALD ARMSTRONG CASE NO. C42153."

20 THE FACT OF THE MATTER, YOUR HONOR, IS I NEVER
21 DID.

22 THERE IS ONLY ONE WAY TO DISPROVE THE FACT
23 THAT THEY HAVE PUT IN ISSUE AND THAT IS TO GET INTO THOSE
24 FILES.

25 THEY HAVE CHALLENGED ME AND DEMURRED TO A
26 CROSS-COMPLAINT THAT I HAVE FILED WHICH PUTS IN ISSUE WHO
27 CONTROLS THE ORGANIZATION.

28 THE COURT: WAIT A MINUTE.

000626

1 WELL, DO YOU ALLEGE THAT MR. YANNY REPRESENTED
2 THE CHURCH IN THIS CASE C420153?

3 MR. DRESCHER: WHAT PARAGRAPH IS THAT?

4 MR. YANNY: 16.

5 THIS IS A VERIFIED COMPLAINT, YOUR HONOR.
6 THIS IS A VERIFIED COMPLAINT BY THREE PARTIES.

7 MR. DRESCHER: THERE'S NOTHING IN THIS PARAGRAPH THAT
8 SAYS MR. YANNY WAS COUNSEL OF RECORD OR ANYTHING OF THAT
9 NATURE. IT IS AN ALLEGATION OF FACT THAT PART OF THE TIME
10 PERIOD IN WHICH THIS CASE WAS ORIGINALLY PENDING BEFORE
11 JUDGE BRECKENRIDGE, MR. YANNY WAS REPRESENTING AT LEAST ONE
12 OF THE CHURCHES; THE POINT BEING --

13 MR. YANNY: EXCUSE ME --

14 MR. DRESCHER: -- NOT AS COUNSEL OF RECORD, BUT AS A
15 LAWYER.

16 THE COURT: IT DOESN'T EXCLUDE THAT.

17 MR. DRESCHER: MR. YANNY KNOWS FULL WELL HIS ROLE AND
18 HE KNOWS FULL WELL HE IS TRYING TO END RUN JUDGE CARDENAS.

19 LET ME GIVE YOU A LITTLE VIGNETTE --

20 THE COURT: IF YOU WOULD LIKE, I WILL UNSEAL THE
21 RECORD TO THE EXTENT JUDGE CARDENAS FINDS IT DISCOVERABLE
22 IN HIS CASE.

23 MR. DRESCHER: THAT IS FINE.

24 MR. YANNY: I MIGHT ALSO MAKE A POINT: THESE PEOPLE
25 HAVE IN DEPOSITION -- REVEREND FORNADAY, WHO IS SITTING
26 RIGHT OVER THERE, TESTIFIED THAT ONE OF THE THINGS THAT I
27 DID TO BREACH MY FIDUCIARY DUTY TO MY FORMER CLIENT WAS TO
28 TELL JERRY ARMSTRONG ABOUT FAIR GAME. THE FILE IS NECESSARY

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1 TO PROVE THAT.

2 THE COURT: YOU WILL HAVE TO CONVINCING JUDGE CARDENAS
3 AS TO ITS DISCOVERABILITY.

4 WE'LL REFASHION THIS MOTION. IT IS A MOTION
5 FOR LEAVE TO OBTAIN ACCESS TO THE SEALED FILES HEREIN.

6 THE MOTION IS GRANTED TO THE EXTENT THAT JUDGE
7 CARDENAS DETERMINES INFORMATION IN THE SEALED FILES IS
8 DISCOVERABLE BY MR. YANNY IN CASE NO. BC033035.

9 AND IF SUCH IS DISCOVERABLE, IT WILL BE ON THE
10 SAME TERMS AND CONDITIONS AS TO ANY UNSEALED PORTIONS. IT
11 IS SUBJECT TO THE SAME TERMS AND CONDITIONS OF THE DIVISION
12 III OPINION. AND RESPONDING PARTY MAY SUBMIT AN ORDER
13 SETTING THAT FORTH.

14 WE ARE NOW POTENTIALLY ADDING TO A LITTLE BIT
15 MORE UNCONFIDENTIALITY. AND I MIGHT SEE FOUR OR FIVE MORE
16 OF THESE.

17 MR. DRESCHER: IN THAT REGARD, THE COURT WILL MAKE
18 AVAILABLE TO JUDGE CARDENAS THE SEALED DOCUMENTS?

19 THE COURT: IF JUDGE CARDENAS WANTS THEM. THAT IS
20 ANOTHER QUESTION. IF JUDGE CARDENAS FEELS HE NEEDS TO LOOK
21 AT THE FILE IN ORDER TO MAKE A DETERMINATION, HE CAN,
22 CERTAINLY, GET THAT DONE. IF HE WANTS TO HAVE A SPECIFIC
23 ORDER, HE'LL DO IT. I THINK HE HAS AS MUCH POWER AS I DO,
24 BUT MAYBE NOT IN THIS FILE.

25 NORMALLY DISCOVERABILITY IS NOT -- YOU DON'T
26 HAVE TO LOOK AT EVERYTHING; YOU CAN MAKE A DISCOVERY ORDER
27 BASED UPON THE STANDARD OF DISCOVERY. AND IN THIS CASE IT
28 SHOULD BE FAIRLY EASY BECAUSE IF THERE IS A CONTESTED ISSUE

000628

1 AS TO WHETHER YANNY REPRESENTED THE CHURCH IN THIS CASE,
2 UNLESS IT CAN BE LIMITED SOMEHOW THAT HE WASN'T OF RECORD,
3 IT IS GOING TO BE DISCOVERABLE.

4 MR. YANNY: IF IT IS LIMITED, I DID NOT APPEAR AS
5 COUNSEL IN THIS CASE. THEY MADE THE ALLEGATION THAT I
6 REPRESENTED HIM VIS-A-VIS THIS CASE.

7 MR. DRESCHER: I RAISE THE QUESTION FOR ONLY PROCEDURAL
8 REASONS, YOUR HONOR. I AM SORRY IT SPANNED BEYOND THAT.

9 THE COURT: I THINK THE ORDER WILL STAND AS MADE. YOU
10 MAY SUBMIT AN APPROPRIATE ORDER.

11 MR. YANNY: THANK YOU.

12 THE COURT: IN EACH CASE MOVING PARTY TO GIVE NOTICE.

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15 (CONCLUSION OF PROCEEDINGS.)

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000629

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. 56

HON. BRUCE R. GEERNAERT, JUDGE

CHURCH OF SCIENTOLOGY OF
CALIFORNIA,

PLAINTIFF,

VS.

GERALD ARMSTRONG,

DEFENDANT.

CASE NO. C 420 153

REPORTER'S CERTIFICATE

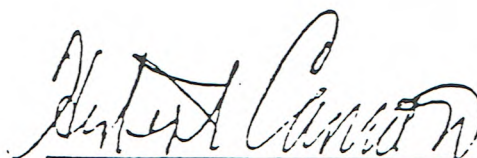
STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

SS

I, HERBERT CANNON, OFFICIAL REPORTER OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE FOREGOING PAGES, 1 THROUGH 77, COMPRISE A TRUE AND CORRECT TRANSCRIPT OF THE PROCEEDINGS HELD IN THE ABOVE-ENTITLED MATTER ON DECEMBER 23, 1991.

DATED THIS 6TH DAY OF JANUARY, 1992.



OFFICIAL REPORTER

CSR NO. 1923

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(Non-Attorney - California State Courts Only)

I am over the age of 18 and not a party to this cause. On January 15, 1992, I personally served a true and correct copy of DECLARATION OF GRAHAM E. BERRY AND EXHIBITS FILED IN SUPPORT OF DEFENDANTS MOTION FOR LEAVE TO FILE FIRST AMENDED ANSWER TO PLAINTIFFS' VERIFIED AMENDED COMPLAINT on each of the following:

John J. Quinn, Esq.
QUINN, KULLY & MORROW
520 South Grand Avenue
Eighth Floor
Los Angeles, California 90071

Service was accomplished in the manner checked below:

_____ I personally delivered it to the attorney(s) or party
named above.

During the absence of the attorney from the office, I left it with the attorney's clerk or with a person having charge of the office.

_____ When there was no person in the attorney's office, I left it in a conspicuous place in the office between 9:00 a.m. and 5:00 p.m.

When the office of the attorney was closed, I left it at the attorney's residence (which is in the same county as his or her office (with a person at least 18 years old.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on January 15, 1992.

000631

PROOF OF PERSONAL SERVICE

(Non-Attorney - California State Courts Only)

I am over the age of 18 and not a party to this cause. On January 15, 1992, I personally served a true and correct copy of DECLARATION OF GRAHAM E. BERRY AND EXHIBITS FILED IN SUPPORT OF DEFENDANTS MOTION FOR LEAVE TO FILE FIRST AMENDED ANSWER TO PLAINTIFFS' VERIFIED AMENDED COMPLAINT on each of the following:

William T. Drescher, Esq.
23679 Calabasas Road
Suite 338
Calabasas, California 91302

Service was accomplished in the manner checked below:

_____ I personally delivered it to the attorney(s) or party named above.

_____ During the absence of the attorney from the office, I left it with the attorney's clerk or with a person having charge of the office.

_____ When there was no person in the attorney's office, I left it in a conspicuous place in the office between 9:00 a.m. and 5:00 p.m.

_____ When the office of the attorney was closed, I left it at the attorney's residence (which is in the same county as his or her office (with a person at least 18 years old.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on January 15, 1992.

000632

PROOF OF PERSONAL SERVICE

(Non-Attorney - California State Courts Only)

I am over the age of 18 and not a party to this cause. On January 15, 1992, I personally served a true and correct copy of DECLARATION OF GRAHAM E. BERRY AND EXHIBITS FILED IN SUPPORT OF DEFENDANTS MOTION FOR LEAVE TO FILE FIRST AMENDED ANSWER TO PLAINTIFFS' VERIFIED AMENDED COMPLAINT on each of the following:

Laurie Bartilson, Esq.
Helena K. Kobrin, Esq.
BOWLES & MOXIN
6244 Sunset Boulevard
Suite 2000
Hollywood, California 90028

Service was accomplished in the manner checked below:

_____ I personally delivered it to the attorney(s) or party named above.

_____ During the absence of the attorney from the office, I left it with the attorney's clerk or with a person having charge of the office.

_____ When there was no person in the attorney's office, I left it in a conspicuous place in the office between 9:00 a.m. and 5:00 p.m.

_____ When the office of the attorney was closed, I left it at the attorney's residence (which is in the same county as his or her office (with a person at least 18 years old.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on January 15, 1992.

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PROOF OF SERVICE

STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action; my business address is: 221 North Figueroa Street, Suite 1200, Los Angeles, California 90012

On January 15, 1992, I served the foregoing document(s) described as: DECLARATION OF GRAHAM E. BERRY AND EXHIBITS FILED IN SUPPORT OF DEFENDANTS MOTION FOR LEAVE TO FILE FIRST AMENDED ANSWER TO PLAINTIFFS' VERIFIED AMENDED COMPLAINT on the interested parties in this action by placing a true and correct copy thereof enclosed in a sealed envelope addressed as follows:

SEE ATTACHED SERVICE LIST

(X) (BY MAIL) I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation fate or postage meter date is more than one day after date of deposit for mailing in affidavit.

() (BY PERSONAL DELIVERY) I caused such envelope to be delivered by hand to the offices of the addressee.

(X) (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

() (FEDERAL) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on January 15, 1992, at Los Angeles, California.

ARHLENE BUNING

(Signature)

000634

ANIS D'AMATO
S & BISGAARD
MYERS
SUITE 1200
FIGUEROA STREET

SERVICE LIST

Joseph A. Yanny, Esq.
1925 Century Park East
Suite 1260
Los Angeles, California 90067

Patrick K. Smith, Esq.
1408 Talbott Tower
131 North Ludlow Street
Dayton, Ohio 45402-1773

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MARIN

HON. MICHAEL B. DUFFICY, JUDGE DEPARTMENT 4

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CHURCH OF SCIENTOLOGY
INTERNATIONAL, A CALIFORNIA
NOT-FOR-PROFIT RELIGIOUS
CORPORATION,

PLAINTIFFS,

VS.

GERALD ARMSTRONG, ET AL.,

DEFENDANTS.

NO. 152229

REPORTER'S TRANSCRIPT OF PROCEEDINGS

TUESDAY, MARCH 3, 1992

REPORTED BY: DEBORAH S. BARTUNEK, CSR 4822

000637

A-P-P-E-A-R-A-N-C-E-S

TUESDAY, MARCH 3, 1992

---000---

FOR THE PLAINTIFFS:

WILSON, RYAN, BLUM & CAMPILONGO
235 MONTGOMERY STREET, SUITE 450
SAN FRANCISCO, CALIFORNIA 94104
BY: ANDREW H. WILSON, ESQUIRE

BOWLES & MOXON
6255 SUNSET BOULEVARD, SUITE 2000
HOLLYWOOD, CALIFORNIA 90028
BY: LAURIE J. BARTILSON, ESQUIRE

FOR THE DEFENDANT GERALD ARMSTRONG:

FORD GREENE, ESQUIRE
711 SIR FRANCIS DRAKE BOULEVARD
SAN ANSELMO, CALIFORNIA 94960

FOR PETITIONER/INTERVENOR JOSEPH A. YANNY:

LEWIS, D'AMATO, BRISBOIS & BISGAARD
221 NORTH FIGUEROA STREET, SUITE 1200
LOS ANGELES, CALIFORNIA 90012
BY: GRAHAM E. BERRY, ESQUIRE

000638

1 TUESDAY, MARCH 3, 1992

1:30 P.M.

2 ---000---

3 P-R-O-C-E-E-D-I-N-G-S

4 THE COURT: GOOD AFTERNOON. ALL RIGHT IN
5 THE MATTER OF CHURCH OF SCIENTOLOGY
6 INTERNATIONAL VERSUS GERALD ARMSTRONG, ET AL.
7 CASE NUMBER 152229.

8 STARTING WITH COUNSEL FOR PLAINTIFF,
9 COULD WE HAVE YOUR APPEARANCES FOR THE RECORD
10 PLEASE?

11 MR. WILSON: GOOD AFTERNOON, YOUR HONOR.
12 MY NAME IS ANDREW WILSON; WILSON, RYAN, BLUM &
13 CAMPILONGO, APPEARING ON BEHALF OF THE
14 PLAINTIFF.

15 AND SEATED TO MY LEFT IS --

16 MS. BARTILSON: LAURIE BARTILSON FROM
17 BOWLES & MOXON, ALSO FOR PLAINTIFF.

18 THE COURT: ALL RIGHT.

19 MR. GREENE: FORD GREENE APPEARING ON
20 BEHALF OF GERALD ARMSTRONG, THE DEFENDANT.

21 MR. BERRY: GRAHAM BERRY OF LEWIS,
22 D'AMATO, BRISBOIS & BISGAARD APPEARING ON BEHALF
23 OF THE PETITIONER AND PROPOSED INTERNEVER.

24 THE COURT: OKAY. I HAVE REVIEWED THE
25 PLEADINGS THAT HAVE BEEN FILED TO DATE; NEEDLESS
26 TO SAY IT'S MASSIVE.

27 I WANT TO INDICATE TO YOU
28 TENTATIVELY WHAT I PROPOSE DOING, THEN I'M GOING

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1 TO -- I'M SURE THERE WILL BE SOME ARGUMENT.

2 DEFENDANT MR. ARMSTRONG IS ENTITLED
3 UNDER THE CODE, UNDER THE LOCAL RULES, TO ONE
4 CONTINUANCE OF THE HEARING ON THE -- FOR, I
5 THINK, PLAINTIFFS' APPLICATION FOR A PRELIMINARY
6 INJUNCTION.

7 I'M INCLINED TO, AFTER REVIEWING THE
8 PAPERS, TO GRANT PLAINTIFFS -- TO GRANT THE
9 REQUEST FOR THE CONTINUANCE, BUT TO GRANT
10 PLAINTIFFS' REQUEST FOR A TEMPORARY RESTRAINING
11 ORDER PENDING THE HEARING.

12 THE INTENT OF THE TEMPORARY
13 RESTRAINING ORDER IS SIMPLY TO PRESERVE THE
14 STATUS QUO, NOT TO ORDER ANYBODY TO DO -- TO DO
15 ANYTHING AFFIRMATIVELY, JUST TO FREEZE
16 EVERYTHING UNTIL WE HAVE A FULL HEARING.

17 SECONDLY, IN REGARD TO MR. YANNY'S
18 APPLICATION TO INTERVENE, I WANT TO SET THAT FOR
19 HEARING SO WE CAN HAVE A FULL HEARING ON THAT.
20 THE PEOPLE HAVE AN OPPORTUNITY TO FILE PAPERS IN
21 OPPOSITION, AND SO FORTH.

22 I WOULD BE INCLINED, THOUGH, TO --
23 TODAY TO GRANT A REQUEST TO FILE AN AMICUS
24 CURIAE BRIEF.

25 SO FOR THE SAKE OF ARGUMENT, THEN IF
26 HIS MOTION TO INTERVENE WERE TO BE DENIED, HE
27 WOULD AT LEAST HAVE AN OPPORTUNITY TO FILE WITH
28 THE COURT AN AMICUS BRIEF AND HAVE HIS POSITION

000640

1 HEARD, WHICH WOULD APPEAR TO ME NOT TO PREJUDICE
2 THE PLAINTIFF OR DEFENDANT.

3 AND THEN I WOULD SET THE MATTER FOR
4 HEARING, SPECIALLY SET IT AT 9:00 IN THE MORNING
5 SO HE COULD HAVE AS MUCH TIME AS HE NEEDS, OR
6 SOME DATE AFTER MARCH 16TH WHEN I RETURN.

7 THE JURY TRIAL I'M IN RIGHT NOW WILL
8 STILL BE PROCEEDING, SO I WAS GOING TO SUGGEST A
9 DAY, EITHER THURSDAY OR FRIDAY OF THAT WEEK.

10 SO WITH THAT -- THOSE REMARKS IN
11 MIND, FIRST LET ME ASK THE PLAINTIFF:

12 WHAT'S YOUR POSITION AS FAR AS
13 TODAY'S HEARING AFTER HAVING HEARD WHAT I
14 INDICATED?

15 MR. WILSON: YOUR HONOR, WE WOULD HAVE
16 ABSOLUTELY NO PROBLEM WITH ANYTHING WITH YOUR
17 ORDER, PARTICULARLY. THAT'S ALL WE WANT. WE
18 JUST WANTED TO GET A HEARING. IF THE HEARING
19 WAS GOING TO BE PUT OFF, WE WANTED A T.R.O. TO
20 PRESERVE THE STATUS QUC.

21 WE THINK WE'RE ENTITLED TO IT FOR
22 THE SAME REASONS THAT WE SET FORTH IN THE
23 PRELIMINARY INJUNCTION PAPERS.

24 WITH SOME HESITANCY, I WOULD POINT
25 OUT THAT I DON'T BELIEVE THAT THE DEFENDANT IS
26 ENTITLED TO A CONTINUANCE UNDER 527, BECAUSE NO
27 T.R.O. WAS GRANTED. HE ONLY GOT THE -- THE
28 ORDER TO SHOW CAUSE. SO HE REALLY DOESN'T HAVE

000641

1 AN ABSOLUTE RIGHT TO IT.

2 THAT'S THE ONLY COMMENT THAT I HAVE.

3 THE COURT: BUT AS A PRACTICAL MATTER,
4 I'M NOT GOING TO BE HERE ON FRIDAY. I'M
5 INVOLVED IN A JURY TRIAL, SO IT WOULDN'T BE
6 PRACTICAL.

7 MR. WILSON: YOUR HONOR, WE -- I THINK
8 YOUR SOLUTION IS A GREAT SOLUTION TO THE
9 PROBLEM. WE COMPLETELY AGREE WITH IT.

10 THE COURT: MR. GREENE.

11 MR. GREENE: I DON'T THINK IT'S A GREAT
12 SOLUTION.

13 FIRST OF ALL, WITH RESPECT TO THE
14 GRANTING OF A TEMPORARY RESTRAINING ORDER, IT
15 WOULD NOT PRESERVE THE STATUS QUO. WHAT IT
16 WOULD DO WOULD BE TO IN EFFECT BE MANDATORY, AND
17 COMPEL MR. ARMSTRONG TO ENGAGE IN CONDUCT THAT
18 HE'S NOT ENGAGING IN NOW.

19 I POINT OUT TO THE COURT THAT BASED
20 ON THE PLAINTIFF'S MOVING PAPERS, THE CONDUCT OF
21 WHICH THEY COMPLAIN COMMENCED, ACCORDING TO
22 THEIR PAPERS, IN JUNE OF 1991 ALMOST A YEAR
23 AGO.

24 AND SO, FOR THE PLAINTIFF TO COME
25 INTO COURT NOW, EIGHT MONTHS LATER, AND SAY,
26 WE'RE BEING IRREPARABLY HARMED, WE NEED A
27 TEMPORARY RESTRAINING ORDER, IS BELIED BY THE
28 DELAY THAT PLAINTIFF HAS ENGAGED IN IN SEEKING

000642

1 THE RELIEF THAT THEY CLAIM THEY NEED.

2 THE COURT: SEE, NOW WE'RE STARTING TO
3 GET FAR AFIELD. THIS IS ALL SUBJECTS WE'RE
4 GOING TO ARGUE WHEN WE HEAR THE APPLICATION FOR
5 PRELIMINARY INJUNCTION. THE INTENT OF THE
6 TEMPORARY RESTRAINING ORDER IS SIMPLY TO FREEZE
7 EVERYTHING UNTIL BOTH SIDES HAVE THEIR
8 HEARINGS.

9 I DON'T WANT TO SPEND A LOT OF TIME
10 GOING INTO YOUR ARGUMENT, WHICH I'LL LISTEN TO
11 IN DETAIL AT THE NEXT HEARING.

12 MR. GREENE: PART OF THE PROBLEM ALSO,
13 YOUR HONOR, IS I'M NOT REALLY SURE WHAT THE
14 SPECIFIC PROVISIONS OF A TEMPORARY RESTRAINING
15 ORDER WOULD BE. I HAVE SERIOUS QUESTIONS ABOUT
16 HOW THOSE WOULD BE ENFORCED.

17 FOR EXAMPLE, GERALD ARMSTRONG IS MY
18 EMPLOYEE. HE WORKS IN MY OFFICE, AS YOU
19 PROBABLY NOTED FROM THEIR MOVING PAPERS.

20 WOULD THE ISSUANCE OF A TEMPORARY
21 RESTRAINING ORDER COMPEL HIM NOT TO WORK FOR
22 ME? I WOULD SUBMIT THAT THERE WOULD -- THAT IF
23 THE ORDERS ISSUE, AND ARMSTRONG DOES START
24 WORKING FOR ME, THAT THE PLAINTIFFS WILL BE IN
25 HERE ON SOME SORT OF A CONTEMPT CITATION OR SOME
26 OTHER EFFORT TO ENFORCE THE RESTRAINING ORDER.

27 THE COURT: WELL, WE'RE GOING TO GET TO
28 THE CONTENDED RESTRAINING ORDER IN JUST A

000643

1 SECOND.

2 LET ME ASK COUNSEL FOR MR. YANNY'S
3 SIDE OF THE CASE, WHAT'S YOUR POSITION?

4 MR. BERRY: YOUR HONOR, THE TEMPORARY
5 RESTRAINING ORDER WOULD DO AN END RUN AROUND
6 JUDGE CADANA'S (PHONETIC) ORDER WHICH EXPRESSLY
7 ADMITS TO YANNY TO GATHER EVIDENCE FOR HIS
8 DEFENSE, AND SPECIFICALLY TO INTERVIEW WITNESSES
9 SUCH AS MR. ARMSTRONG.

10 FURTHERMORE, IT EXPRESSLY SUGGESTS
11 THAT THIS COURT HAS FOUND A LIKELIHOOD OF
12 SUCCESS ON THE MERITS.

13 THE COURT: NO, NO, I DIDN'T SAY THAT.

14 WHAT'S HAPPENED ON THIS CASE, WITH A
15 CHALLENGE IT WAS ASSIGNED TO ME FOR HEARING ON
16 FRIDAY. I'M NOT GOING TO BE HERE FRIDAY. I'M
17 INVOLVED IN THE FIFTH WEEK OF A MURDER TRIAL
18 THAT I'M GOING TO COMPLETE IN AN ORDERLY
19 MANNER.

20 I WANT TO GIVE ALL PARTIES IN THIS
21 CASE AS MUCH TIME AS THEY NEED TO ARGUE THIS
22 MATTER. IT'S NOT PRACTICAL TO ARGUE IT BEFORE
23 THE FRIDAY HEARING. UNDER THE LOCAL RULES
24 NORMALLY THERE WOULD SIMPLY BE, AFTER 2:00
25 O'CLOCK ON THURSDAY, AN INDICATED RULING.

26 I'M NOT GOING TO DO THAT. I'M GOING
27 TO GIVE ALL OF YOU A HEARING BEFORE I MAKE A
28 RULING. I'LL SPECIALLY SET IT THE WEEK OF THE

000644

1 16TH WHEN I GET BACK.

2 AND TO GIVE MR. YANNY AN
3 OPPORTUNITY, I'M GOING TO HEAR HIS MOTION TO
4 INTERVENE AT THE TIME.

5 BUT I'M GOING TO SIGN TODAY AN ORDER
6 ALLOWING HIM TO FILE HIS AMICUS SO HIS POSITION
7 WILL BE SET FORTH PRIOR TO THAT HEARING.

8 MR. BERRY: AND WITH REGARD TO THAT,
9 SHOULD A COMPLAINT TO INTERVENE BE FILED PRIOR
10 TO THAT HEARING?

11 THE COURT: NO, BECAUSE I HAVEN'T RULED
12 ON THAT MOTION.

13 MR. WILSON: YOUR HONOR, WOULD YOU LIKE
14 ME TO ADDRESS THE DELAY ISSUE? I CAN ADDRESS --
15 I THINK I CAN, I THINK, SHOW WE HAVE NOT
16 DELAYED, AND ANY DELAYS IN HAVING THIS MATTER
17 HEARD WERE NOT OUR DOING. WE TRIED TO GET IT
18 HEARD BEFORE NOW.

19 THE FIRST THING THAT PLAINTIFF IN
20 THIS CASE HAS TRIED TO DO IS ENFORCE A
21 SETTLEMENT AGREEMENT IN LOS ANGELES COUNTY
22 SUPERIOR COURT IN AN ACTION IN WHICH IT WAS
23 ENTERED.

24 THE JUDGE THERE SAID THEY DIDN'T
25 HAVE JURISDICTION AFTER MR. ARMSTRONG GOT A
26 TOTAL CONTINUANCE OF 45 DAYS.

27 THEN WE CAME HERE. IT WAS SET OVER
28 30 DAYS AGO. MR. GREENE BECAME DISENCHANTED

000645

1 WITH JUDGE STEPHENS AND FILED HIS CHALLENGE.

2 WE HAVE NOT DELAYED HERE. AND I
3 THINK THAT FOR MR. BERRY TO SAY THAT WE'RE
4 TRYING TO DO AN END RUN AROUND AN ORDER ENTERED
5 BY JUDGE CARDANA IS -- I'M AT A LOSS TO
6 UNDERSTAND HOW YOU CAN MAKE THAT STATEMENT.

7 I'VE GOT THE ORDER HERE. THE ORDER
8 DOES NOT SPECIFICALLY ALLOW WHAT MR. BERRY --

9 THE COURT: THOSE ARE JUST THE KIND OF
10 DETAILS WE CAN'T GET INTO TODAY.

11 MR. WILSON: I DIDN'T WANT THAT.

12 THE COURT: WHAT ARE YOU SEEKING? LET'S
13 BE CLEAR ON THIS, BECAUSE MR. GREENE CERTAINLY
14 HAS A POINT.

15 WHAT ARE YOU SEEKING IN THE
16 TEMPORARY RESTRAINING ORDER SPECIFICALLY?

17 MR. WILSON: WE ARE SEEKING THE SAME
18 ORDER AS FOR THE PRELIMINARY INJUNCTION WHICH
19 PROHIBITS MR. ARMSTRONG FROM VIOLATING THE
20 SETTLEMENT AGREEMENT IN SEVERAL RESPECTS:

21 ONE, DISCLOSING THE CONTENTS OF THE
22 SETTLEMENT AGREEMENT. THAT PROBABLY ISN'T A
23 PROBLEM BECAUSE IT UNFORTUNATELY HAS BECOME A
24 PUBLIC RECORD IN ANOTHER ACTION, SO ANYBODY WHO
25 WANTS TO SEE IT IS GOING TO GET IT.

26 SO WE'RE TALKING ABOUT THREE OTHER
27 PROVISIONS. A PROVISION WHICH PREVENTS MR.
28 ARMSTRONG FROM ACTIVELY AIDING PERSONS ENGAGED

1 IN LITIGATION ADVERSE TO THE CHURCH OF
2 SCIENTOLOGY, THAT'S ONE. THAT'S PROBABLY WHAT
3 MR. GREENE IS CONCERNED ABOUT.

4 I'LL MAKE THIS COMMENT.

5 OF COURSE, WE DO NOT SAY THAT MR.
6 ARMSTRONG CANNOT WORK FOR MR. GREENE. MR.
7 ARMSTRONG SHOULD NOT WORK ON CASES WHICH INVOLVE
8 THE CHURCH OF SCIENTOLOGY. THAT'S ALL WE'RE
9 SAYING.

10 NOW WE -- IF HE CONTINUES TO WORK
11 FOR MR. GREENE, WE BETTER HAVE SOME PRETTY
12 SPECIFIC PROOF THAT WHEN HE'S DOING THAT, HE'S
13 WORKING ON SCIENTOLOGY CASES.

14 I MEAN, I WOULD NOT BE SO FOOLISH AS
15 TO COME IN HERE ON A CONTEMPT MOTION UNLESS I
16 HAD CLEAR, CONVINCING EVIDENCE THAT MR.
17 ARMSTRONG, IN WORKING FOR MR. GREENE, WAS
18 VIOLATING THAT PROVISION OF THE ORDER.

19 THE OTHER PROVISIONS RELATE TO
20 CONFIDENTIALITY, AND MR. ARMSTRONG'S DISCLOSURE
21 OF EXPERIENCES THAT HE HAD WHILE HE WAS A MEMBER
22 OF THE CHURCH OF SCIENTOLOGY, AND CERTAIN
23 KNOWLEDGE THAT MR. ARMSTRONG MAY HAVE OF THE
24 LIFE AND THE PEOPLE RELATED TO MR. E. RON
25 HUBBARD, THE CHURCH'S FOUNDER.

26 SO IT'S THOSE FOUR PROVISIONS THAT
27 WE'RE SEEKING. THE FIRST OF WHICH I SAID
28 PROBABLY ISN'T A PROBLEM, AND THE SECOND THREE

000647

1 ARE REALLY WHAT WE'RE CONCERNED ABOUT.

2 THE ONLY ONE THAT I THINK MR. GREENE
3 HAS MADE A POINT ABOUT IS NUMBER TWO, WHICH IS
4 THE ONE HAVING TO DO WITH AIDING PEOPLE ENGAGED
5 IN LITIGATION WITH THE CHURCH OF SCIENTOLOGY.

6 MS. BARTILSON: IF I MAY JUST CLARIFY
7 THAT PROVISION, YOUR HONOR, FOR A MOMENT.

8 THAT PROVISION IN THE SETTLEMENT
9 AGREEMENT DOES NOT PROHIBIT MR. ARMSTRONG FROM
10 BEING SUBPOENAED BY ANYONE TO GIVE TESTIMONY
11 ANYPLACE. IT CERTAINLY WOULDN'T PREVENT MR.
12 YANNY FROM DEPOSING MR. ARMSTRONG; IN FACT, THE
13 DEPOSITION OF MR. ARMSTRONG IS RIGHT NOW SET IN
14 THE YANNY MATTER FOR MARCH 16TH.

15 SO THAT WOULD NOT PRESENT ANY
16 PROBLEM AS FAR AS I COULD TELL WITH MR. YANNY.
17 WE'RE TALKING ABOUT VOLUNTARY ASSISTANCE.

18 THE COURT: MR. GREENE, WE REQUIRE ON A
19 TEMPORARY RESTRAINING ORDER SPECIFIC LANGUAGE
20 THAT DOES NOT PREVENT MR. ARMSTRONG FROM WORKING
21 FOR YOU IN YOUR LAW OFFICE.

22 MR. GREENE: I NEED TO ALSO ADDRESS
23 ADDITIONAL POINTS.

24 THE COURT: YOUR 15 MINUTES -- I SAID 15
25 MINUTES TODAY -- ARE JUST ABOUT UP.

26 MR. GREENE: WELL THEN, LET ME HAVE MY
27 FAIR SHAKE.

28 ONE, WITH RESPECT TO THE SETTLEMENT

1 AGREEMENT, THAT'S A PART OF THE RECORD IN THIS
2 CASE. SO THAT IS CERTAINLY PUBLIC, AND NOT
3 GERMANE.

4 TWO: WITH RESPECT TO CONFIDENTIALITY
5 ABOUT ARMSTRONG'S KNOWLEDGE OF THE CHURCH OF
6 SCIENTOLOGY AND E. RON HUBBARD, OUR POSITION IS
7 THAT FOR THE COURT TO ENJOIN ARMSTRONG FROM
8 SPEAKING IS A VIOLATION OF THE FIRST AMENDMENT
9 RIGHT TO FREE SPEECH.

10 TO ENJOIN ARMSTRONG FROM ASSOCIATING
11 WITH INDIVIDUALS WHO MAY OR MAY NOT BE ADVERSE
12 TO THE CHURCH OF SCIENTOLOGY IS ALSO A VIOLATION
13 OF THE FIRST AMENDMENT RIGHT TO FREELY ASSOCIATE
14 IN SUPPORT OF THE EXERCISE OF FREE SPEECH
15 RIGHTS.

16 AND WHAT PLAINTIFFS ARE SEEKING TO
17 DO IS TO ASK THE COURT TO ISSUE AN
18 UNCONSTITUTIONAL ORDER.

19 I MIGHT POINT OUT THAT AT THIS TIME
20 IN THE STATE LEGISLATURE HERE IN CALIFORNIA,
21 THERE'S A BILL NUMBER 711 WINDING ITS WAY
22 THROUGH THE SENATE WHICH WOULD SPECIFICALLY
23 PROHIBIT AGREEMENTS SUCH AS THAT WHICH IS BEFORE
24 THE COURT AND WHICH PLAINTIFFS ARE SEEKING THE
25 COURT TO ENFORCE, EVEN IF TEMPORARILY.

26 ADDITIONALLY, WITH RESPECT TO THE
27 SECOND ITEM MENTIONED ON PREVENTING ARMSTRONG
28 FROM ASSISTING THOSE WHO ARE ADVERSE TO

1 SCIENTOLOGY, I SUBMIT THAT THE WORDING IS SO
2 VAGUE THAT MR. ARMSTRONG CANNOT BE ON NOTICE AS
3 TO WHAT IT IS THAT HE IS TO DO AND NOT TO DO,
4 AND IN THAT REGARD IT IS UNCONSTITUTIONAL AS
5 WELL.

6 ANY KIND OF ORDER THAT'S GOING TO
7 IMPINGE ON FREE SPEECH RIGHTS HAS GOT TO BE
8 NARROWLY DRAWN, AND HAS GOT TO SPECIFICALLY
9 IDENTIFY WHAT THEIR PROHIBITED BEHAVIOR IS, AND
10 I DON'T THINK, ONE, THAT ANY ORDER IMPINGING ON
11 FREE SPEECH RIGHTS IS PROPER.

12 AND TWO: I DON'T THINK THAT SUCH AN
13 ORDER CAN BE DRAWN WITH THE REQUISITE
14 SPECIFICITY IN ORDER TO PASS CONSTITUTIONAL
15 MUSTER.

16 FINALLY, IF THE COURT ISSUES AN
17 ORDER LIKE THAT, WHAT IS THE EFFECT OF THE
18 ORDER?

19 THE EFFECT OF THE ORDER IS THAT
20 ARMSTRONG THEN CAN'T GO OUT AND TRY TO TALK TO
21 WITNESSES IN ORDER TO OBTAIN THE EVIDENCE AND
22 INFORMATION FOR HIS OWN DEFENSE IN THIS CASE.

23 I WOULD SUBMIT THAT, YES, THAT IF
24 THE ORDER ISSUED, THAT ARMSTRONG WOULD BE
25 PREVENTED FROM DOING THAT.

26 COUNSEL MADE THE POINT ARMSTRONG CAN
27 BE SUBPOENAED. HOWEVER, IN THE AGREEMENT THAT
28 SCIENTOLOGY IS ATTEMPTING TO HAVE THIS COURT

000650

1 ENFORCE, THERE'S A SPECIFIC PROVISION THAT SAYS
2 THAT ARMSTRONG IS TO, QUOTE, NOT MAKE HIMSELF
3 AMENABLE TO SERVICE OF PROCESS CONTRARY TO THE
4 INTENT AND SPIRIT OF THIS AGREEMENT.

5 HE'S SUPPOSED TO AVOID SERVICE OF
6 PROCESS. HE IS SUPPOSED NOT TO PROVIDE
7 TESTIMONY.

8 AND I THINK THAT THE ORDER,
9 TEMPORARY AS IT MIGHT BE NOW IN MARCH OF 1992,
10 CONCERNING CONDUCT THAT THEY CLAIM STARTED IN
11 JUNE OF 1991, THERE AREN'T SUFFICIENT GROUNDS.

12 WE'RE PREPARED TOMORROW TO SUBMIT
13 OUR OPPOSITION AS REQUIRED TO BY CCP 527 SO AS
14 TO HAVE THE MATTER HEARD NOW, SO AS TO INSURE
15 THAT THERE IS NOT ANY KIND OF UNCONSTITUTIONAL
16 INFRINGEMENT BY JUDICIAL ORDER ON MR.
17 ARMSTRONG'S RIGHTS TO FREE SPEECH AND TO FREELY
18 ASSOCIATE.

19 I ALSO SUBMIT THAT WHAT THE
20 PLAINTIFF IS SEEKING TO DO ULTIMATELY WOULD
21 CONSTITUTE A FRAUD ON THE COURT. IT'S SAYING,
22 MR. ARMSTRONG, YOU CAN'T GO OUT, YOU CAN'T
23 OBTAIN EVIDENCE, YOU CAN'T ASSOCIATE WITH PEOPLE
24 WHO ARE SUPPOSED TO BE ADVERSE TO SCIENTOLOGY.
25 BUT WHAT WE CAN DO IS GET ALL PREPARED, BUT IF
26 YOU DO, YOU'RE GOING TO BE IN CONTEMPT OF COURT.

27 THAT'S NOT FAIR.

28 AND SO, ON THIS SHORT NOTICE, AND ON

000651

1 THIS QUICK BASIS, WITHOUT AN OPPORTUNITY TO
2 REALLY SIT DOWN AND TOTALLY THINK ABOUT IT,
3 THOSE ARE -- THOSE ARE THE REASONS WHY THE COURT
4 SHOULD NOT ISSUE ANY KIND OF TEMPORARY ORDER.

5 AND IF THE COURT IS INCLINED TO DO
6 SO, MY REQUEST IS THAT THE COURT STAY THE
7 EFFECTIVENESS OF ANY SUCH T.R.O. FOR ANYWHERE
8 FROM FOUR DAYS TO A WEEK, SO WE CAN WRIT IT
9 BECAUSE I DON'T THINK THAT IT WOULD BE AN
10 APPROPRIATE ORDER AND I THINK THAT IT'S
11 SOMETHING THAT SHOULD BE REVIEWED.

12 THE COURT: ALL RIGHT. HERE'S WHAT WE'RE
13 GOING TO DO.

14 I'M GOING TO SET THE MATTER FOR
15 HEARING ON ALL PENDING MOTIONS FOR 9:00 O'CLOCK
16 ON FRIDAY, MARCH 20TH.

17 ANY ADDITIONAL PLEADINGS OR
18 RESPONSES --

19 MR. GREENE: YOUR HONOR, I'VE GOT A
20 CONFLICT IN SONOMA COUNTY.

21 THE COURT: YOU CALL SONOMA COUNTY AND
22 TELL THEM YOU WILL BE IN MARIN COUNTY BECAUSE
23 YOU HAVE A CASE WITH COUNSEL COMING.

24 MR. GREENE: I WILL.

25 THE COURT: -- ANY ADDITIONAL PLEADINGS,
26 RESPONSES AND SO FORTH, FROM ANY OF THE
27 PARTIES -- THIS INCLUDES MR. YANNY'S AMICUS
28 BRIEF -- ARE TO BE FILED BY 5:00 O'CLOCK,

000652

1 ACTUALLY 4:30, ON MONDAY, MARCH 16TH.

2 MS. BARTILSON: EXCUSE ME, YOUR HONOR.

3 WOULD IT BE POSSIBLE FOR US TO HAVE
4 AN OPPORTUNITY TO DO A REPLY TO THEIR
5 OPPOSITIONS? CAN WE SCHEDULE IT THAT WAY?

6 THE COURT: ALL RIGHT. THEN ANY PARTY
7 MAY REPLY, AGAIN, BUT GIVE ME A LITTLE TIME
8 THERE, BY THE CLOSE OF BUSINESS ON THURSDAY THE
9 19TH.

10 IF THERE ARE REPLIES, THEY BETTER BE
11 COPIED FOR ME AND BETTER BE DELIVERED, BECAUSE
12 I'M GOING OVER EVERYTHING THAT NIGHT.

13 MS. BARTILSON: OKAY.

14 MR. WILSON: THANK YOU, YOUR HONOR.

15 THE COURT: AND I'M GOING TO SIGN THE
16 ORDER ALLOWING MR. YANNY TO FILE AN AMICUS
17 BRIEF.

18 MR. BERRY: THANK YOU, YOUR HONOR.

19 THE COURT: AND I WILL HAVE A FULL
20 HEARING ON THE 20TH ON HIS APPLICATION TO
21 INTERVENE IN THE ACTION.

22 MR. BERRY: AND WE WILL BE HEARD ON THE
23 AMICUS BRIEF AS WELL IN RELATION TO --

24 THE COURT: YES.

25 MR. BERRY: THANK YOU.

26 THE COURT: I'M GOING TO ISSUE THE
27 REQUESTED TEMPORARY RESTRAINING ORDER, BUT WITH
28 THE -- I WANT IN THE ORDER THE SPECIFIC RELIEF

000653

1 FOR MR. ARMSTRONG THAT HE CAN CONTINUE TO WORK
2 FOR MR. GREENE AND MR. GREEN'S LAW OFFICE.

3 MR. WILSON: WE WILL PUT THAT IN THERE.
4 WE'LL SUBMIT IT TO COUNSEL FOR APPROVAL AS TO
5 FORM. IF HE DOESN'T APPROVE IT WITH AN
6 INDICATION THAT HE WON'T --

7 THE COURT: IF IT'S UNTIMELY, I WILL BE
8 HERE THROUGH THE END OF BUSINESS ON THURSDAY,
9 THEN I'LL BE GOING OUT OF THE COUNTRY FROM
10 FRIDAY MORNING UNTIL MONDAY THE 16TH.

11 MR. WILSON: WE'LL SUBMIT THE ORDER TO
12 YOU BY TOMORROW AT NOON.

13 AND WHY DON'T WE -- WHAT IF MR.
14 GREENE HAS AN OBJECTION, HE CAN COMMUNICATE BY
15 LETTER TO YOU WITH COPIES TO US.

16 THE COURT: FINE.

17 MR. WILSON: THAT WAY WE DON'T HAVE
18 TO --

19 THE COURT: THAT'S FINE.

20 MR. WILSON: THANK YOU.

21 MR. GREENE: WHAT --

22 THE COURT: ANY QUESTION ABOUT
23 SCHEDULING?

24 MR. GREENE: NO.

25 MR. BERRY: YES, YOUR HONOR. 4:00 P.M.
26 MONDAY, MARCH 16TH, FOR OPPOSITION?

27 THE COURT: LET'S GO OVER THAT AGAIN.

28 ANY ADDITIONAL PLEADINGS, DOCUMENTS

000654

1 IN OPPOSITION TO PENDING MOTIONS, AND SO FORTH,
2 MUST BE FILED BY 4:30 ON MONDAY, MARCH 16TH.

3 ANY RESPONSE THAT ANY OF THE PARTIES
4 WISH TO FILE TO ANY OF THE PLEADINGS FILED ON
5 THE 16TH MUST BE FILED NO LATER THAN 4:30 ON
6 THURSDAY THE 19TH, AND A HEARING ON ALL PENDING
7 MOTIONS, NAMELY MR. YANNY'S MOTION TO INTERVENE
8 AND PLAINTIFFS' MOTION FOR A PRELIMINARY
9 INJUNCTION, WILL BE HEARD IN THIS DEPARTMENT AT
10 9:00 O'CLOCK ON FRIDAY, THE 20TH OF MARCH.

11 MR. GREENE: ONE OTHER HOUSEKEEPING
12 MATTER BEFORE YOU IS MY EX PARTE APPLICATION,
13 THAT I UNDERSTAND IS UNOPPOSED, TO FILE A BRIEF
14 IN EXCESS OF 15 PAGES. CAN WE DEAL WITH THAT
15 NOW?

16 MR. WILSON: NO PROBLEM.

17 THE COURT: LOOKING AT THE DOCUMENTS, A
18 MERE FEW EXTRA PAGES WILL NOT BOTHER ME; SO YES,
19 THAT WILL BE GRANTED.

20 MS. BARTILSON: CAN WE ASK FOR THE SAME
21 COURTESY ON OUR REPLY, YOUR HONOR?

22 THE COURT: YES. LET'S JUST WAIVE THE 15
23 PAGES.

24 MS. BARTILSON: WAIVE IT.

25 MR. WILSON: THAT'S ONE THING WE CAN ALL
26 AGREE ON, YOUR HONOR.

27 THE COURT: I'D RATHER HAVE EVERYTHING IN
28 WRITING SO I CAN READ IT AHEAD OF TIME.

000655

1 MR. GREENE: SO IF I CAN UNDERSTAND WHAT
2 THE ORDER IS WITH RESPECT TO THE T.R.O.:

3 ALL OF THE RELIEF THAT IS BEING
4 SOUGHT BY THE PLAINTIFF IN REGARD TO A
5 PRELIMINARY INJUNCTION IS BEING GRANTED ON A
6 TEMPORARY BASIS EXCEPT FOR ARMSTRONG WORKING IN
7 MY OFFICE?

8 THE COURT: THAT'S CORRECT. THAT'S
9 CORRECT.

10 MR. GREENE: OKAY. AND THEN THE REASONS
11 FOR THAT ARE AS SET FORTH IN THEIR PAPERS AS
12 WELL, I WOULD CONCLUDE.

13 I JUST WANTED TO MAKE SURE THAT I'M
14 RIGHT.

15 THEN ALSO, WOULD THE SCOPE OF THAT
16 ORDER PRECLUDE ARMSTRONG FROM TALKING TO OTHER
17 INDIVIDUALS FOR THE PURPOSE OF OBTAINING
18 EVIDENCE TO DEFEND HIMSELF IN THESE
19 PROCEEDINGS?

20 THE COURT: I'M NOT GOING TO PRERULE ON
21 THAT. YOU CAN USE YOUR OWN JUDGMENT. THE ORDER
22 WILL SAY WHAT THE ORDER SAYS.

23 MR. WILSON: THANK YOU, YOUR HONOR.

24 THE COURT: ONE OTHER THING REGARDING
25 YANNY.

26 I HAVE A PROPOSED ORDER REGARDING
27 THE AMICUS. ARE YOU GOING TO PREPARE ANOTHER
28 FORM OF ORDER, OR DO YOU WANT TO USE THE

1 PROPOSED ORDER?

2 MR. BERRY: THERE SEEMS NO REASON WHY WE
3 CAN'T USE THE PROPOSED ORDER, YOUR HONOR.

4 THE COURT: I'LL JUST TAKE A LOOK AT IT.

5 MS. BARTILSON: MAY I SEE WHAT IT SAYS? I
6 HAVEN'T SEEN IT, YOUR HONOR.

7 THE COURT: ALL RIGHT. THEN I'M GOING TO
8 SIMPLY SIGN THAT ORDER. THAT BRIEF IS TO BE
9 FILED BY 5:00 O'CLOCK ON THE 16TH.

10 MR. WILSON: THANK YOU, YOUR HONOR.

11 MR. GREENE: SO YOUR HONOR, JUST SO THAT
12 I'M CLEAR WITH MR. ARMSTRONG, WE HAVE TO TRY TO
13 GUESS WHAT THE SCOPE OF THE ORDER IS, WHAT HE
14 CAN OR CANNOT --

15 THE COURT: IT'S NOT GUESSING, IT'S
16 INTERPRETING THE ORDER. THAT'S WHAT LAWYERS DO
17 ALL THE TIME.

18 MR. GREENE: I'M AWARE OF THAT.

19 AND ALL I CAN SAY IS I BELIEVE THAT
20 THE COURT IS PUTTING US IN A NIGH IMPOSSIBLE
21 POSITION, BECAUSE ON THE ONE HAND I BELIEVE THE
22 ORDER IS GOING TO SAY ARMSTRONG CAN'T GO AND
23 CONTACT PEOPLE ADVERSE TO SCIENTOLOGY, AS THOSE
24 ARE THE ONLY ONES HE'S GOING TO GET ANY HELP
25 FROM.

26 THE COURT: THE --

27 MR. BERRY: ONE POINT I WANT TO FURTHER
28 CLARIFY:

000657

1 YOUR HONOR JUST MADE A COMMENT ABOUT
2 SOMETHING BY 5:00 P.M. MARCH 16 WITH REGARD TO
3 THE ORDER. WAS THAT A FINAL ORDER?

4 THE COURT: SAY THAT AGAIN.

5 MR. BERRY: YOUR HONOR JUST MADE A
6 COMMENT WHICH I MISSED ABOUT FILING ANOTHER
7 ORDER BY MARCH 16TH. AM I MISHEARING IT?

8 THE COURT: NO. I WAS SAYING YOU HAVE A
9 PROPOSED ORDER. IT SAYS PROPOSED IN THE AMICUS
10 BRIEF. I SAID DO YOU WANT TO PREPARE ANOTHER
11 ONE. YOU SAID NO, SO I SIMPLY SIGNED THE ONE
12 THAT YOU SUBMITTED.

13 MR. BERRY: THANK YOU.

14 MR. WILSON: THANK YOU, YOUR HONOR.

15 MR. BARTILSON: THANK YOU, YOUR HONOR.

16 MR. BERRY: THANK YOU, YOUR HONOR.

17 (WHEREUPON, THE PROCEEDINGS WERE CONCLUDED.)
18

19 --OOO--
20
21
22
23
24
25
26
27
28

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1
2 STATE OF CALIFORNIA)
3 COUNTY OF MARIN) SS.
4
5

6 I, DEBORAH S. BARTUNEK, DO HEREBY CERTIFY
7 THAT I AM AN OFFICIAL COURT REPORTER OF THE
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN
9 AND FOR THE COUNTY OF MARIN;

10 THAT, AS SUCH, I REPORTED THE PROCEEDINGS
11 HAD IN THE ABOVE-ENTITLED ACTION AT THE TIME AND
12 PLACE SET FORTH HEREIN;

13 THAT MY STENOTYPE NOTES WERE THEREAFTER
14 TRANSCRIBED INTO TYPEWRITING UNDER MY DIRECTION;

15 THAT THE FOREGOING PAGES, NUMBERED 3
16 THROUGH 22, INCLUSIVE, CONSTITUTES THE
17 TRANSCRIPT OF THE PROCEEDINGS HELD ON THE ABOVE
18 MENTIONED DATE, IN THE ABOVE-ENTITLED CASE.

19 DATED: SAN RAFAEL, CALIFORNIA, THIS 4TH
20 DAY OF MARCH, 1992.
21
22
23

24 Deborah S. Bartunek
25 DEBORAH S. BARTUNEK, CSR 4822
26
27
28

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000660

Exhibit P

HUB LAW OFFICES
Ford Greene, Esquire
California State Bar No. 107601
711 Sir Francis Drake Boulevard
San Anselmo, California 94960-1949
Telephone: (415) 258-0360

Attorney for Defendant
GERALD ARMSTRONG

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY)
INTERNATIONAL, a California)
not-for-profit religious)
corporation;)

Plaintiffs,)

vs.)

GERALD ARMSTRONG; DOES 1)
through 25, inclusive,)

Defendants.)

No. 152 229

DECLARATION OF GERALD ARMSTRONG
IN OPPOSITION TO SCIENTOLOGY'S
MOTION FOR PRELIMINARY
INJUNCTION

Date: March 20, 1992
Time: 9:00 a.m.
Dept: 4 - Specially Set

I, Gerald Armstrong, declare and state:

1. I am making this declaration to support an opposition to
a motion brought by the Scientology organization in the case of
Church of Scientology International v. Armstrong, Marin County
Superior Court No. 152 229 to enforce the settlement agreement I
had entered into with the organization in December 1986. The
facts hereinafter set forth are of my own first-hand knowledge.

2. I became involved with Scientology as a customer in 1969
in Vancouver, B.C. I worked on staff there in 1970 and in
February 1971 joined the Sea Organization (SO or Sea Org) in Los

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1 Angeles. I was flown to Spain and joined the Sea Org's flag ship,
2 "Apollo," in Morocco. L. Ron Hubbard, the Sea Org's
3 "Commodore," was on board and operated Scientology internationally
4 through the "crew" which numbered, during my stay on board of four
5 and a half years, around four hundred. All my staff positions on
6 board involved personal contact with L. Ron Hubbard, Mary Sue
7 Hubbard, administrative organization staff and people in the ports
8 and countries the "Apollo" visited, and included "Ship's
9 Representative" (legal representative), "Port Captain" (public
10 relations officer), and "Information Officer" (intelligence
11 officer).

12 3. In the fall of 1975 after the ship operation moved
13 ashore in Florida I was posted in the Guardian's Office (GO)
14 Intelligence Bureau connected to Hubbard's Personal Office. From
15 December 1975 through June 1976 I held the post of Deputy LRH
16 External Communications Aide, a relay terminal for Hubbard's
17 written and telex traffic to and from Scientology organizations.
18 From July 1976 to December 1977 I was assigned, on Hubbard's
19 order, to the "Rehabilitation Project Force" (RPF), the SO prison
20 system. In 1978 I worked in Hubbard's cinematography crew in La
21 Quinta, California making movies under his direction until the
22 fall of that year when he again assigned me to the RPF, this time
23 for eight months first in La Quinta, then at a newly purchased
24 base in Gilman Hot Springs near Hemet, California. When I got out
25 of the RPF in the spring of 1979 and until the beginning of 1980 I
26 worked in Hubbard's "Household Unit" (HU) at Gilman, the SO unit
27 which took care of Hubbard's house, personal effects, transport,
28 meals and so forth, as the "Purchaser," "Renovations In-Charge"

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1 and "Deputy Commanding Officer HU."

2 4. Throughout 1980 and until I left the organization in
3 December 1981 I held the organization posts in Hubbard's "Personal
4 Public Relations Bureau" of "LRH Archivist" and "LRH Personal
5 Researcher." I assembled in Los Angeles an archive of Hubbard's
6 writings and other materials relating to his history to be used
7 as, inter alia, the basis for a biography to be written about the
8 man. I also worked in Los Angeles for the first few months of 1980
9 on Mission Corporate Category Sortout (MCCS), which had the
10 purpose of restructuring the Scientology enterprise so that
11 Hubbard could continue to control it without being liable for its
12 actions. (A tape recording of two meetings relating to MCCS's
13 actions subsequently became the subject of Church of Scientology
14 of California v. Zolin.) Beginning in the fall of 1980 and
15 continuing until my departure, I provided the biographical
16 writings and other materials, as I collected and organized them,
17 to Omar Garrison, who had contracted with the organization to
18 write the Hubbard biography. I interviewed many people who had
19 known Mr. Hubbard at periods throughout his life, including almost
20 all of his known living relatives. I traveled several thousand
21 miles collecting biographical information and conducting a
22 genealogy search, and arranged the purchase of a number of
23 collections of Hubbard-related documents and other materials from
24 individual collectors.

25 5. Through my research and study of documentary evidence I
26 was compelled to conclude that Mr. Hubbard had lied about his
27 past, credentials, accomplishments, relationships and intentions.
28 I obtained evidence which disproved many of the claims made by

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19

Hubbard in his biographies, printed in Scientology publications and used in promotion of the man and his philosophy and psychotherapy; consequently I attempted to get the organization executives responsible for these publications to correct the disproven claims. As a result I was ordered to be security checked, an invasive interrogation employing an electronic meter as a lie detector, a procedure I had undergone many times in the Sea Org. I had by this time obtained evidence which disproved the significant representations Hubbard had made about himself or his "technology" which had drawn me into and kept me in the organization for over twelve years; e.g., that he was an engineer and an atomic physicist, that he had been crippled and blinded in combat in WW II and had cured himself with his mental science, discoveries, that it was a matter of medical record that he had twice been pronounced dead, that his psychotherapy had been subjected to rigorous scientific testing, that it cured all psychosomatic ills and raised IQs a point per hour of therapy (I had by this time had well over a thousand hours), that he had been remunerated for his labors less than staff members were paid (in my case between \$4.30 and \$17.20 per week throughout my 50 years), and that he and his organization were ethical and well-intentioned. When it became clear to me that I was not going to be able to get the organization or Hubbard to admit to the lies and take a more honest path I, and my wife Jocelyn, left the organization.

6. Following my departure the organization published a "Declaration" dated February 18, 1982 labelling me a "Suppressive Person (SP)." An SP is considered in Scientology completely

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1 psychotic and destructive, one of the two and a half percent truly
2 evil people on the planet. SPs are viewed as enemies of
3 Scientology and mankind and are targets for the organization's
4 "Fair Game Policy," which states specifically that they may be
5 lied to, cheated, sued and destroyed without discipline of the
6 Scientologist committing such acts. The SP Declare also accused
7 me of "spreading destructive rumors about senior Scientologists."
8 I knew in early 1982 that I was the target of Guardian's Office
9 intelligence operations because certain friends were contacted and
10 interrogated about me by known GO intelligence personnel. The
11 organization also appropriated a set of photographs I had
12 entrusted with an associate, Virgil Wilhite, and when I demanded
13 their return told me to get a lawyer.

14 7. A few days later I met with attorney Michael Flynn who
15 agreed to defend me against the organization, which on April 22,
16 1982 published a second SP declare accusing me of eighteen
17 "crimes, high crimes and suppressive acts," including, inter alia,
18 promulgating false information about Hubbard and the organization.
19 In the late spring and summer of 1982 I obtained from Omar
20 Garrison with his permission some of the documents I had delivered
21 to him while in the organization which I considered I would need
22 to defend myself against the organization's charges in the SP
23 declares and whatever actions they would bring against me in the
24 non-Scientology courts. I sent these to Mr. Flynn and to Contos
25 and Bunch, a California law firm which by then had agreed to
26 represent me in Scientology litigation. The organization filed
27 suit against me in the Los Angeles Superior Court on August 2,
28 1982 and the Hubbard biography documents I had sent to my lawyers

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1 were ordered by the Court to be deposited with the clerk where
2 they stayed until trial in the spring of 1984.

3 8. In August and September 1982 the organization employed a
4 number of private investigators to surveil and harass my wife and
5 me. During that period one of these investigators assaulted me
6 bodily, and another struck my body with a car, and attempted to
7 involve me a freeway accident by getting in front of my car and
8 slamming on his brakes and pulling alongside my car and swerving
9 into my lane. The organization also attempted to get the Los
10 Angeles Police Department to bring criminal charges against me in
11 connection with the Hubbard documents which had become the subject
12 of the litigation in the Superior Court.

13 9. I filed a cross-complaint in 1982 against various
14 Scientology corporations which was bifurcated from the underlying
15 document case and never tried because it settled in December 1986.
16 The document case was tried without a jury by Judge Paul G.
17 Breckenridge, Jr. who rendered a decision on June 20, 1984.
18 Between that time and the settlement the organization continued
19 its campaign against me which included at least these acts:

- 20 ▶ attempted entrapment;
21 ▶ illegal videotaping;
22 ▶ filing false criminal charges against me with the Los
23 Angeles District Attorney;
24 ▶ filing false criminal charges against me with the Boston
25 Office of the FBI;
26 ▶ filing false declarations to bring contempt of court
27 proceedings against me on three occasions;
28 ▶ obtaining perjured affidavits from English private

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1 investigators, who had harassed me in London in 1984, accusing me
2 of distributing "sealed" documents;

3 • international dissemination of Scientology publications
4 falsely accusing me of crimes, including crimes against humanity;
5 and

6 • culling and disseminating information from my supposedly
7 confidential auditing (psychotherapy) file.

8 10. On December 5, 1986 I was flown to Los Angeles, as were
9 several other of Mr. Flynn's clients with claims against the
10 organization to participate in a "global settlement." After my
11 arrival in LA I was shown a copy of a document entitled "Mutual
12 Release of All Claims and Settlement Agreement," hereinafter
13 referred to as "the settlement agreement," and some other
14 documents, which I was expected to sign.

15 11. The settlement agreement has now become a public
16 document, and it and its effects are issues in various lawsuits
17 now pending.

18 12. Upon reading the settlement agreement draft I was
19 shocked and heartsick. I told Mr. Flynn that the condition of
20 "strict confidentiality and silence with respect to [my]
21 experiences with the [organization]" (settlement agreement, para.
22 7D), since it involved over seventeen years of my life, was
23 impossible. I told him that the "liquidated damages" clause
24 (para. 7D) was outrageous; that pursuant to the settlement
25 agreement I would have to pay \$50,000.00 if I told a doctor or
26 psychologist about my experiences from those years, or if I put on
27 a resume what positions I had held during my organization years.
28 I told Mr. Flynn that the requirements of non-amenability to

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1 service of process (para. 7H) and non-cooperation with persons or
2 organizations adverse to the organization (paras. 7G, 10) were
3 obstructive of justice. I told him that I felt that agreeing to
4 leave the organization's appeal of the decision in Armstrong and
5 not respond to any subsequent appeals (para. 4B) was unfair to the
6 courts and all the people who had been helped by the decision. I
7 told Mr. Flynn that an affidavit the organization was demanding
8 that I sign along with the settlement agreement was false. That
9 document, which I do not have, stated, inter alia, that my
10 disagreements with the organization had been with prior
11 management, and not with the then-current leadership. In fact
12 there had been no management change and I had the same
13 disagreements with the organization's "fair game" policies and
14 actions which had continued without change up to the time of the
15 settlement. I told him that I was being asked to betray
16 everything and everyone I had fought for against an organization
17 which was based upon injustice.

18 13. In answer to my objections to the settlement agreement,
19 Mr. Flynn said that the silence and liquidated damages clauses,
20 and anything which called for obstruction of justice were not
21 worth the paper they were printed on. He said the same thing a
22 number of times and a number of ways; e.g., that I could not
23 contract away my Constitutional rights; that the conditions were
24 unenforceable. He said that he had advised the organization
25 attorneys that those conditions in the settlement agreement were
26 not worth the paper they were printed on, but that the
27 organization, nevertheless, insisted on their inclusion in the
28 settlement agreement and would not agree to any changes. He

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1 pointed out the clauses concerning my release of all claims
2 against the organization to date and its release of all claims
3 against me to date (paras. 1, 4, 5, 6, 8) and said that they were
4 the essential elements of the settlement and were what the
5 organization was paying for.

6 14. Mr. Flynn also said that everyone was sick of the
7 litigation and wanted to get on with their lives. He said that he
8 was sick of the litigation, the threats to him and his family and
9 wanted out. He said that as a part of the settlement he and all
10 co-counsels had agreed to not become involved in organization-
11 related litigation in the future. He expressed a deep concern
12 that the courts in this country cannot deal with the organization
13 and its lawyers and their contemptuous abuse of the justice
14 system. He said that if I didn't sign the documents all I had to
15 look forward to was more years of harassment and misery. One of
16 Mr. Flynn's other clients, Edward Walters, who was in the room
17 with us during this discussion, yelled at me, accusing me of
18 killing the settlement for everyone, and that everyone else had
19 signed or would sign, and everyone else wanted the settlement.
20 Mr. Flynn said that the organization would only settle with
21 everyone together; otherwise there would be no settlement. He did
22 agree to ask the organization to include a clause in my settlement
23 agreement allowing me to keep my creative works relating to L. Ron
24 Hubbard or the organization (para. 7L).

25 15. Mr. Flynn said that a major reason for the settlement's
26 "global" form was to give the organization the opportunity to
27 change its combative attitude and behavior by removing the threat
28 he and his clients represented to it. He argued that the

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organization's willingness to pay us substantial sums of money, after its agents and attorneys had sworn for years to pay us "not one thin dime" was evidence of a philosophic shift within the organization. I argued that the settlement agreement evidenced the unchanged philosophy of fair game, and that if the organization did not use the opportunity to transform its antisocial nature and actions toward its members, critics and society I would, a few years hence, because of my knowledge of organization fraud and fair game, be again embroiled in its litigation and targeted for extralegal attacks.

17. During my meeting with Mr. Flynn in Los Angeles I found myself facing a dilemma which I reasoned through in this way. If I refused to sign the settlement agreement and affidavit all the other settling litigants, many of whom had been flown to Los Angeles in anticipation of a settlement, would be extremely disappointed and would continue to be subjected to organization harassment for an unknown period of time. I had been positioned in the settlement drama as a deal-breaker and would undoubtedly

1 lose the support of some if not all of these litigants, several of
2 whom were key witnesses in my case against the organization.
3 Although I was certain that Mr. Flynn and my other lawyers would
4 not refuse to represent me if I did not sign the documents I also
5 knew that they all would view me as a deal-breaker and they would
6 be as disappointed as the other litigants in not ending the
7 litigation they desperately wanted out of. The prospect of
8 continuing the litigation with unhappy and unwilling attorneys on
9 my side, even though my cross-complaint was set for trial within
10 three months, was distressing. On the other hand, if I signed the
11 documents, all my co-litigants, some of whom I knew to be in
12 financial trouble, would be happy, the stress they felt would be
13 reduced and they could get on with their lives. Mr. Flynn and the
14 other lawyers would be happy and the threat to them and their
15 families would be removed. The organization would have the
16 opportunity they said they desired to clean up their act and start
17 anew. I would have the opportunity to get on with the next phase
18 of my life and the financial wherewithal to do so. I was also not
19 unhappy to at that time not have to testify in all the litigation
20 nor to respond to the media's frequent questions. If the
21 organization continued its fair game practices toward me I knew
22 that I would be left to defend myself and I accepted that fact.
23 So, armed with Mr. Flynn's advice that the conditions I found so
24 offensive in the settlement agreement were not worth the paper
25 they were printed on, and the knowledge that the organization's
26 attorneys were also aware of that legal opinion, I put on a happy
27 face and the following day went through the charade of a
28 videotaped signing.

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1 18. It was my understanding and intention at the time of the
2 settlement that I would honor the silence and confidentiality
3 conditions of the settlement agreement, and that the organization
4 had agreed to do likewise.

5 19. Following the December 1986 settlement the organization
6 continued its fair game campaign against me in violation of the
7 spirit and letter of the settlement agreement. I detailed the
8 post-settlement violations I knew about in my declaration of March
9 15, 1990, which was filed in the Court of Appeal as an exhibit to
10 a document entitled "Defendant's Reply to Appellants' Opposition
11 to Petition for Permission to File Response and for Time" and
12 served on the Los Angeles Superior Court on March 24, 1990, and my
13 declaration of December 25, 1990, which was filed in the Court of
14 Appeal as "Defendant's Appendix" to "Defendant's Brief" and served
15 on the Los Angeles Superior Court on December 28, 1990. I request
16 that this Court take Judicial Notice of these declarations and the
17 exhibits thereto as they are part of the record in this case.

18 20. The organization's violations of the settlement
19 agreement include at least:

20 a) Use in 1987 of my name and a false and unfavorable
21 description of my organizational experiences in a "dead agent"
22 pack relating to Bent Corydon, pages 11, 12, 18 and 29 from which
23 are attached hereto true and correct copies as Exhibit E;

24 b) Filing several false affidavits, attached herewith are
25 true and correct copies as Exhibit F (Kenneth David Long's First
26 Affidavit dated October 5, 1987), Exhibit G (Kenneth Long's Second
27 Affidavit dated October 5, 1987), Exhibit H (Kenneth Long's Third
28 Affidavit dated October 5, 1987), Exhibit K (Sheila MacDonald

1 Chaleff's First Affidavit dated October 5, 1987), Exhibit I
2 [Kenneth Long's Fourth Affidavit dated October 7, 1987), and
3 Exhibit J (Kenneth Long's Fifth Affidavit dated October 8, 1987)
4 in the case of Church of Scientology of California v. Russell
5 Miller and Penguin Books Limited, Case no. 6140 in the High Court
6 of Justice in London England, accusing me of violations of court
7 orders in the Armstrong case, and labeling me "an admitted agent
8 provocateur of the U.S. Federal Government;"

9 c) Delivering a copy of an edited version of the 1984
10 illegal videotape of me, a photocopy of the cassette for which
11 showing the business card of organization private investigator
12 Eugene Ingram to the London Sunday Times (see Ex. H of Exhibit 1-
13 GG);

14 d) Threatening me with lawsuits on six occasions as set
15 forth in my March 15, 1990 and December 25, 1990 declarations of
16 which I have asked the Court to take judicial notice, above;

17 e) Threatening to release a description of a dream I had
18 had, and which the organization had stolen from a friend of mine,
19 if I did not assist them in preventing Bent Corydon from gaining
20 access to the Armstrong court file;

21 f) Using my name and a false rendition of the
22 organization's 1984 videotape operation where they attempted to
23 entrap me into the commission of a crime in the Complaint filed in
24 the case of Church of Scientology International v. Xanthos, Case
25 No. 91-4301 SVW filed August 12, 1991 in US District Court,
26 Central District of California (see Exhibit 1-DD at 13:23-14:17);

27 g) Using the same false rendition of the 1984 "Armstrong
28 Operation," perjurious declarations by organization lawyers and a

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1 general attack on my character and truthfulness in various
2 pleadings filed in August 1991 in the case of Aznaran v. Church of
3 Scientology of California, et al, No. CV 88-1786 JMI in U.S.
4 District Court, Central District of California. Exhibit J to
5 Exhibit 1-GG is a true and correct copy of pages 2, 3, 33, and 34
6 of "Reply in Support of Defendants' Motion for Summary Judgment
7 Based on the Statute of Limitations." Exhibit K to Exhibit 1-GG
8 is a true and correct copy which comprises pages 4, 5, and 6 of
9 "Supplemental Memorandum in Support of Defendants' Motion to
10 Dismiss Complaint with Prejudice." Exhibit L to Exhibit 1-GG is a
11 true and correct copy of pages 2 - 5 and pages 9 and 10 (the
12 declaration of attorney Laurie J. Bartilson dated August 27, 1991)
13 of "Defendants' Opposition to Ex Parte Application to File
14 Plaintiffs' Genuine Statement of Issues [sic] re Defendants'
15 Motions (1) to Exclude Expert Testimony; and (2) for Separate
16 Trial on Issues of Releases and Waivers; Request that Opposition
17 Be Stricken." I have included only a few pages from these
18 documents in the interest of economy, but will file the complete
19 documents if the Court wishes. The organization has included my
20 declaration of September 3, 1991 "Regarding Alleged 'Taint' of
21 Joseph A. Yanny, Esquire", also filed in the Aznaran case in
22 response to its allegations in these pleadings, as Exhibit N to
23 its motion to enforce the settlement which is Exhibit 1-FF.

24 21. In late 1987 I received a telephone call from a reporter
25 for the London Sunday Times who told me that the organization had
26 delivered to the newspaper a stack of documents concerning me,
27 including materials from the 1984 illegal videotape "Armstrong
28 Operation," and he asked me to comment about them. I was greatly

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1 saddened by this news, but told the reporter only that I
2 considered the organization's action a violation of its agreement
3 with me and I would not comment further.

4 22. When I was threatened in 1988 with exposure of the
5 stolen dream recitation (see 3-15-90 declaration, para. 40), I
6 considered I was being blackmailed. In the hope that by my
7 example I would deter further such conduct, I did not violate the
8 settlement agreement. I learned this past August 1991 in
9 Johannesburg, South Africa that the organization had given a copy
10 of the dream recitation, which had been specifically sealed in the
11 Armstrong litigation, to its representatives in that country.

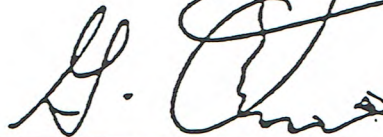
12 23. When I had several times been threatened by organization
13 attorney Larry Heller that I would be sued if I did not obstruct
14 justice as directed by the organization, and when it had become
15 obvious to me that I could not avoid a confrontation with the
16 organization (see 3-15-90 declaration, paras. 4-8, 44) did I
17 respond to defend myself and to correct the injustices created by
18 the settlement agreement and the organization's violations
19 thereof.

20 25. The first action I took was to file on February 28, 1990
21 in the California Court of Appeal, Second Appellate District, in
22 the appeal the organization had maintained from the June 20, 1984
23 decision in Armstrong, a document entitled Respondent's Petition
24 for Permission to File Response and for an Extension of Time to
25 File Response," attached as Exhibit N to Exhibit 1-GG. I did so
26 in part because in my research of my rights following my
27 recognition that I could not avoid involvement I discovered that
28 my agreement to not respond pursuant to the settlement contract

1 was an obstruction of justice. After the Court of Appeal granted
2 my petition on March 9, 1990, I did thereafter file a respondent's
3 brief. Thereafter, on July 29, 1991 an opinion issued in that
4 appeal upholding the trial court's decision on the merits.

5 I declare under the penalty of perjury under the laws of the
6 State of California that the foregoing is true and correct.

7 Executed this March 16, 1992, at San Anselmo, California.

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11 Gerald Armstrong
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1 THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 IN AND FOR THE COUNTY OF LOS ANGELES

3 RELIGIOUS TECHNOLOGY CENTER, A)
4 California Non-Profit Religious)
5 Corporation; CHURCH OF)
6 SCIENTOLOGY INTERNATIONAL, A)
7 Non-Profit Religious Corporation;)
8 and CHURCH OF SCIENTOLOGY OF)
9 CALIFORNIA, A Non-Profit)
10 Religious corporation,)
11)

12 Plaintiffs,)

13 vs.)

No: BC 033035

14 JOSEPH A. YANNY, an individual;)
15 JOSEPH A. YANNY, a professional)
16 law corporation, and DOES 1-25,)
17 inclusive,)
18)

19 Defendants.)
20)
21)
22)
23)
24)
25)

Deposition excerpt of GERALD ARMSTRONG, taken on
behalf of the Plaintiff, at 3340 Ocean Park Boulevard,
Suite 1050, Santa Monica, California 90405, commencing
at 9:00 a.m., Tuesday, March 17, 1992, before Jan
Serra, CSR 8207.

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A P P E A R A N C E S

FOR THE PLAINTIFF CHURCH OF SCIENTOLOGY:

BOWLES & MOXON
BY: KENDRICK L. MOXON, ESQ.
6255 Sunset Boulevard
Suite 2000
Los Angeles, California 90028
(213) 661-4030

FOR THE DEFENDANT:

LEWIS, D'AMATO, BRISBOIS & BISGAARD
BY: GRAHAM E. BERRY, ESQ.
221 North Figueroa Street
Suite 1200
Los Angeles, California 90012
(213) 250-1800

FOR THE WITNESS:

HUB LAW OFFICES
BY: FORD GREENE, ESQ.
711 Sir Francis Drake Boulevard
San Anselmo, California 94960
(415) 258-0360

FOR HIMSELF:

LAW OFFICES OF JOSEPH A. YANNY
BY: JOSEPH A. YANNY, ESQ.
1925 Century Park East
Suite 1260
Los Angeles, California 90067
(213) 551-2966

THE REFEREE: THE HONORABLE THOMAS T. JOHNSON

ALSO PRESENT:

MATT WARD

///

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1 A Yes, I did.

2 Q BY MR. YANNY: Upon what do you base that
3 personal knowledge?

4 A On many policies.

5 Policy letters which were written by
6 Hubbard which laid out the structure of the Guardian's
7 Office.

8 Personal experience within the Guardian's
9 Office.

10 My study of Guardian's Office policies.

11 My study of Guardian's Office
12 intelligence policies and orders.

13 Q And you were a member of the Guardian's
14 Office, is that not correct?

15 A For a brief time and throughout my time
16 in the, as the intelligence officer on board the ship,
17 my direct senior was the assistant guardian for
18 intelligence assigned to the ship.

19 So during that period of time there was a
20 Guardian's Office bureau on board the ship, so
21 essentially I operated in the Guardian's Office at
22 that time. Although the posting remained a Sea Org
23 posting.

24 Q Did you become aware at any point in time
25 of a doctrine known as a "fair game policy?"

1 A Yes.

2 Q Would you tell us what that is?

3 MR. MOXON: Objection, irrelevant.

4 THE REFEREE: Overruled.

5 You may answer.

6 A "Fair game" is a doctrine, philosophy and
7 policy within the organization, created by Hubbard,
8 for dealing with perceived enemies of the
9 organization.

10 It states specifically that someone who
11 is declared fair game, that is a perceived enemy, may
12 be lied to, cheated, stolen from, sued and destroyed,
13 without any action being taken against the person so
14 doing that.

15 MR. MOXON: Object, lack of foundation.

16 Q BY MR. YANNY: Does the policy state that
17 it can be accomplished -- "it" being the destruction
18 of the perceived enemy -- by any means?

19 A Yes.

20 MR. MOXON: Object, leading question.

21 THE REFEREE: It is a leading question
22 Mr. Yanny.

23 Let's pose our questions carefully.

24 Q BY MR. YANNY: Is that policy that you've
25 just talked about a written policy?

17
1 from the 1970's to the present.

2 How that provides any personal knowledge
3 of this witness to any issues in the case is truly
4 beyond me. It's irrelevant and it's wasting all of
5 our time.

6 MR. YANNY: From the affirmative defense,
7 if I could, illegality.

8 THE REFEREE: We have been at this
9 particular line for 40 minutes anyway.

10 MR. YANNY: I understand, Your Honor.
11 Not one question goes by without an objection. It is
12 a long and sordid history.

13 THE REFEREE: I know.

14 But if in fact these decisions say what
15 your question would indicate that they say, and what
16 the witnesses indicate they say, then they say what
17 they say.

18 Let's go to something else.

19 MR. YANNY: The point is this Your Honor.
20 The point is this. The documents that were available
21 for people to prove that pattern and practice
22 beginning in 1970 through the Wallersheim decision in
23 1986, through the precluding one this man has
24 forgotten, which is "The Church of Scientology v.
25 Gerald Armstrong" Court of Appeals decision, and Judge

1 Breckenridge's decision, although there was a
2 consistent ongoing pattern and practice which on a
3 good day is simply intentionally tortious, and day in
4 and day out, criminal.

5 THE REFEREE: The decisions exist. What
6 do they have to do with the testimony from this
7 witness today?

8 MR. YANNY: Because as part of the
9 settlement of these cases what has ended up happening
10 is that people like Mr. Armstrong has been placed in a
11 position where they cannot cooperate with people like
12 the Aznarans voluntarily. They cannot tell them about
13 the existence or location of evidence voluntarily.

14 Q BY MR. YANNY: Mr. Armstrong, was it your
15 understanding that the Flynn agreements required
16 counsel to agree not to take cases against Scientology
17 in the future?

18 A Yes.

19 MR. MOXON: I object, because this is --
20 in the middle he's asking new questions in the middle
21 of the court's request to tie this all together. Mr.
22 Yanny has still failed to do so. It has no
23 conceivable relevance to this case.

24 MR. YANNY: These people come in here
25 asking for equity against me because I made an

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17 1 appearance in the case.

2 They sit there and sue me for breach of
3 fiduciary duties, which as long as I went to school
4 was an equitable request.

8 5 They seek disqualification against me in
6 a case, which as far as I understand, pursuant to
7 California law, is an equitable request that Toby be
8 enjoined from further participating. Their clean
9 hands, their dirty hands is not --

10 MR. MOXON: It's not an equitable
11 question.

12 THE REFEREE: Alright.

13 MR. BERRY: Equitable relief is being
14 sought in this case and we have completely raised the
15 defense that the depletion of the valuable pool of
16 attorneys was part justification for whatever Mr.
17 Yanny did, and the very last question moves right into
18 that area.

19 THE REFEREE: I'm aware that that's part
20 of your position.

21 The objection's overruled.

22 If you still have the question in mind
23 you may answer it.

24 MR. YANNY: I believe he already gave an
25 answer.

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1 Did you get it?

2 THE REPORTER: I'll have to get it.

3 THE REFEREE: The answer that he gave,
4 despite his agreement to give Mr. Moxon a chance to
5 object, was yes.

6 THE WITNESS: Yes.

7 THE REFEREE: Is it still yes?

8 THE WITNESS: Yes.

9 Q BY MR. YANNY: How many attorneys are you
10 personally aware of that gave that agreement?

11 A I have spoken to two attorneys and I'm
12 aware of at least a third. So two I've spoken to who
13 confirmed that they are specifically prohibited.

14 Q Is Julia Dragojevic one of those?

15 A And Michael Flynn. And Julia has advised
16 me that Bruce Bunch is likewise a signatory to such an
17 agreement.

18 Q Mr. Flynn had a partner, what was his
19 name?

20 A My recollection is Michael Tabb maybe,
21 but I have never discussed that with him.

22 Gary MacMurray, I'm sorry, another lawyer
23 that I have communicated with who has advised me that
24 he too has signed such an agreement.

25 Q Do you know of any other people who have

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18 1 been solicited to sign such agreements or agreed to
2 such?

3 A Not that I have spoken to personally, or
4 at least that I do not recall at this time.

5 Q Do you know Barry Van Sickle?

6 A Yes.

7 Q Were you present in my office on one
8 occasion when he recounted a conversation he had had
9 with Bill Drescher?

10 MR. MOXON: Objection, leading question.

11 A Yes.

12 Q BY MR. YANNY: Did you sign a declaration
13 to the effect of what you overheard in that
14 conversation?

15 A Yes, I did.

16 Q To your knowledge was that declaration
17 submitted in court?

18 A Yes.

19 Q Has it been your experience -- you said
20 your case settled, correct?

21 A It settled in part.

22 Q In part.

23 What part settled?

24 A The cross-complaint.

25 Q That was your claims against the

1 organizational?

2 A Right.

3 Q How much did you get paid for that?

4 A I am barred from saying.

5 Q Not in deposition you're not.

6 MR. MOXON: I agree, he is barred from
7 saying.

8 MR. BERRY: The agreement specifically
9 states he will not provide information about that
10 agreement unless compelled by lawful subpoena.

11 MR. YANNY: That's what brings us here
12 this happy day.

13 MR. GREENE: You're not a lawyer. Are
14 you representing him?

15 MR. MOXON: I instruct the witness not to
16 answer.

17 MR. YANNY: He subpoenas him here and
18 brings him here and I'm not allowed to employ the
19 potential bias of the witness?

20 THE REFEREE: I understand your position.
21 I'm looking at the witness' lawyer.

22 THE REFEREE: Two minute break.

23

24 (Recess taken.)

25 ///

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1 MR. GREENE: Back on the record.

2 THE REFEREE: Back on the record.

3 MR. GREENE: With respect to any

4 agreements or discussions between Mr. Armstrong and

5 his former counsel, Michael Flynn, as those

6 particularly relate to any settlement of Mr.

7 Armstrong's cross-complaint, I'm going to assert the

8 attorney-client privilege as it pertained between

9 Armstrong and his former counsel and instruct Mr.

10 Armstrong not to answer that question. The one that's
11 pending.

12 THE REFEREE: Alright.

13 MR. YANNY: I don't know that I
14 understand for the record.

15 THE REFEREE: He's claiming the
16 attorney-client privilege.

17 MR. YANNY: As to the amount of a
18 settlement?

19 THE REFEREE: I guess so.

20 Let me approach this from another
21 standpoint.

22 The function of discovery usually is to
23 determine what a person knows or what a person can say
24 or will say.

25 Is it anticipated that Mr. Armstrong is

000688

8 1 going to be a witness in this, in the trial of this
2 case?

3 MR. YANNY: It sure is Judge. I have
4 been sued for representing him.

5 MR. BERRY: He's the second cause of
6 action Your Honor.

7 THE REFEREE: It's your position that the
8 restraining order obtained from the superior court in
9 Marin County prohibits his being interviewed by you?

10 MR. YANNY: Yes, Your Honor.

11 THE REFEREE: So it's your position that
12 the only way you know what he's going to say is by
13 deposing him under oath?

14 MR. YANNY: Yes, Your Honor.

15 MR. BERRY: I have a copy of the
16 transcript of the hearing in Marin County in my
17 vehicle.

18 THE REFEREE: This seems like a
19 cumbersome way to proceed.

20 MR. YANNY: I agree.

21 MR. MOXON: Yesterday Mr. Yanny filed a
22 motion to intervene in that case.

23 MR. YANNY: To preserve my ability, as
24 any other citizen ought to have in this country, to
25 easily gather information and evidence necessary for

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19
1 the defense.

2 You can't sue me for representing him and
3 tell him by the way of a TRO that he can't assist me
4 in my defense motion. I suggest Marin County is the
5 place Mr. Yanny has the argument, not here.

6 You're trying to unduly multiply the
7 number of proceedings so anybody except people like
8 you with too many tax free bucks to defend
9 themselves -- the fact of the matter is you brought a
10 proceeding in December or November directed exactly at
11 the same enforcement that you're seeking against Mr.
12 Armstrong up north.

13 THE REFEREE: Let's just see where we're
14 going today.

15 I wanted to be sure I was straight on the
16 purpose of the inquiry today and I guess we can go
17 forward.

18 THE WITNESS: But I'm not sure that I
19 really understand, if in fact the terms of the
20 settlement have been made public in the Marin County
21 case and if in fact they have become a matter of
22 public record there --

23 MR. GREENE: That is the case.

24 THE REFEREE: Then can the court take
25 judicial notice of that what record is?

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1 MR. MOXON: There is no judicial notice
2 to take.

3 THE REFEREE: I'm just trying to see the
4 adviseability and necessity of eliciting the testimony
5 on this particular point from this witness.

6 MR. GREENE: If I may for a moment, Your
7 Honor?

8 I represent Mr. Armstrong in the Marin
9 County matter. I practice in the courts up there,
10 numerous times every week.

11 The settlement agreement is a matter of
12 public record. Scientology sought to have it sealed
13 specifically in an ex parte proceeding. That request
14 was denied. Therefore it is a matter of public
15 record.

16 I'm advised by Mr. Berry he has a copy of
17 the agreement here which he can show to the court,
18 Omar III, Michael Dufacy issued a temporary
19 restraining order prohibiting Mr. Armstrong from
20 providing any kind of assistance to Mr. Yanny unless
21 it was pursuant to a subpoena, and taken in the course
22 of a proceeding such as we're doing today.

23 The restraining order specifically
24 prohibits Armstrong from going and talking about how
25 he can assist Mr. Yanny in his defense on just a

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1 casual basis. So they're forced to do this.

2 MR. YANNY: To do my interview here.

3 MR. BERRY: In fact, Your Honor, Mr.

4 Moxon's own employee, Ms. Bartilson, said we do not
5 need the relief we seek in that court case because we
6 can get the information at this deposition.

7 MR. YANNY: If the amount of money that I
8 paid Jerry Armstrong and this court allowed that for
9 the stock -- because this is of course the Gerald
10 Armstrong Corporation according to Mr. Moxon -- is
11 some nefarious scheme set up by the IRS and Zennu
12 himself, if the familiarity of money that flowed one
13 way is relevant then the amount of money is definitely
14 relevant to this man's testimony.

15 THE REFEREE: It's not a question of
16 what's relevant.

17 What I'm trying to understand is if the
18 terms of the settlement are a matter of public record
19 anywhere in California, and apparently they are, and
20 if the TRO, which has to expire sometime I would
21 think, is directed to testimony other than testimony
22 under oath, and from a subpoenaed presence, then
23 what's the basis for the claiming of a privilege?

24 MR. YANNY: Here's the kicker. The
25 agreement does not have the amount.

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1 THE REFEREE: Excuse me. First I'm
2 asking the lawyer for the witness.

3 MR. GREENE: One, we are talking-about
4 more than one agreement. There is what one might call
5 a generic settlement agreement that Armstrong signed,
6 and some 15 to 17 other people signed.

7 In that agreement there is no mention of
8 amounts of money that, an amount of money that went
9 from Scientology to Armstrong so that Armstrong would
10 drop his cross-complaint.

11 The agreement and the basis for my
12 instruction to Armstrong to refuse to answer Mr.
13 Yanny's question was an agreement between Mr.
14 Armstrong and his then counsel, Michael Flynn.

15 So the agreement in Marin County upon
16 which Scientology bases it's lawsuit against Armstrong
17 does not include within its scope the private
18 agreement between Mr. Armstrong and his former
19 counsel. I don't know if that sheds any light.

20 THE REFEREE: The dollar figure is not a
21 matter of public record?

22 MR. GREENE: It is not.

23 MR. YANNY: What ended up happening,
24 these people would settle their claims, Mr. Flynn
25 entered into a separate agreement and he got the money

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1 and parceled it out with all of his clients.

2 THE REFEREE: So the Flynn negotiation
3 then resulted in a settlement agreement, and a block
4 settlement and the distribution of the money was
5 between Flynn and the individual plaintiffs?

6 MR. GREENE: Correct.

7 THE REFEREE: Or cross-complaints?

8 MR. GREENE: Correct.

9 MR. BERRY: And Mr. Flynn himself.

10 MR. MOXON: All these decisions have
11 absolutely nothing to do with the case.

12 Secondly, the court has made some
13 assumptions based on the representations of counsel
14 what is public and what is not public.

15 I have not been involved in the Marin
16 case at all. Our firm is fairly large. I haven't
17 been involved in that. I don't know what's public up
18 there and what isn't.

19 I did, however, call my office, and over
20 the break I got an order from Judge Cardenas, which I
21 brought to Mr. Yanny's attention at the break,
22 indicating that this deposition was not supposed to be
23 an open-ended deposition where anybody can take the
24 deposition they wanted.

25 It was very, very difficult to get this

1 deposition scheduled and it's something that has been
2 a bone of contention for most in this case. Judge
3 Cardenas specifically ruled --

4 MR. YANNY: Is that a complete
5 transcript?

6 MR. MOXON: January 30, 1992. The court
7 notes as follows, however, additionally on that the
8 depositions of Greene, Armstrong and Phippeny will go
9 forward on 5th of February, 5th, 6th and 7th.

10 However, the depositions will be taken by the
11 plaintiff.

12 First, that is to say that the plaintiffs'
13 will have the opportunity to take the individual
14 deposition first. And should the defendants agree to
15 take the deposition of Greene, Armstrong and Phippeny
16 at a later time, that can be done.

17 We noted the deposition of Mr. Armstrong.
18 We had two other depositions scheduled for today.
19 Whatever we get today is not cross-examination.
20 However titillating Mr. Yanny feels this information
21 is with respect to some defense, what he's doing is
22 taking our time and leading in deposition of Mr.
23 Armstrong that Judge Cardenas said would have to be
24 handled at a different time.

25 MR. YANNY: That is an incomplete

1 transcript.

2 I then asked if we would have an
3 opportunity to examine as well pursuant to CCP. The
4 court stated yes. We brought them down here at our
5 expense.

6 THE REFEREE: Whatever everybody's
7 intentions, including Judge Cardenas's intentions were
8 when that hearing was held, things are being done
9 differently, because this isn't happening on February
10 5th, 6th and 7th, this is happening now.

11 We're all under the gun a bit because of
12 the trial date that Judge Cardenas has in mind, I
13 think, and I chose just as a matter of convenience to
14 get done everything that can be done with Mr.
15 Armstrong today.

16 It's clear that Mr. Greene and Ms.
17 Phippany's depositions are going to have to be taken
18 on another day. When? It's up to all of you to agree
19 if you can as to whether that day should be tomorrow
20 or one day next week, and consult with counsel who is
21 getting ready to have his deposition taken tomorrow.

22 That really, I don't see that anything is
23 really lost here in the long run. If in fact, if
24 there was a confidential settlement made involving the
25 Church and whatever form it was in the other

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1 litigation, and Mr. Flynn and Mr. Armstrong, and that
2 agreement has not been made public, then I think I
3 want to hear a little bit more about the claim of
4 privilege here, the claim of work product or whatever
5 privilege this would be.

6 Certainly just thinking about it in
7 general equitable, thinking about the problem in a
8 general equitable sense or thinking about it according
9 to general equitable principles, if Mr. Armstrong got
10 a dollar for settling that might have one effect on
11 him, or if he got a million dollars that might have
12 another effect on him.

13 I haven't detected in listening to him
14 testify today any sentiment toward, any leaning on his
15 part in favor of the Church. Or the organization,
16 whatever terms ya'all can be comfortable with.

17 So you could not really say that the fact
18 that a substantial, if in fact a substantial amount of
19 money went to him in settlement, that it has caused
20 him to lean toward the Church in any testimony that's
21 going to be elicited from him.

22 If Mr. Yanny's point is that the sum
23 should be, the amount should be discovered because the
24 fact that X dollars were spent in this way would
25 indicate some admission of fault on the part of the

000697

15 1 MR. MOXON: Objection, ambiguous
2 question.

3 THE REFEREE: I don't understand that
4 one. Do you want to re-state it?

5 Q BY MR. YANNY: You were sued in 1982 by
6 the organization and Mary Sue Hubbard, is that
7 correct?

8 A Yes.

9 Q What was the purpose of that suit as you
10 understand it currently?

11 A It had to do with my transmission of
12 documents to my lawyers at that time, that is Michael
13 Flynn and Julia Dragojevic which I had obtained from
14 Omar Garrison in the spring and summer of '82 in order
15 to send to them.

16 Q Was that suit eventually culminated? Did
17 it terminate in some fashion?

18 A Yes.

19 Q Did that suit eventually settle?

20 MR. MOXON: Objection, Mr. Yanny knows
21 that the settlement of that suit was the subject of a
22 confidential agreement between the parties.

23 He's attempting to use information he
24 acquired as counsel for the Church to further breach
25 and further commit torts against the plaintiff.

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15 1 MR. YANNY: Objection. This is a
2 published opinion.

16 3 MR. BERRY: I would also point out the
4 settlement agreement has been filed in open court in
5 Marin County, and if Mr. Moxon is referring to
6 privileges they have been waived by the commencement
7 of this litigation and were held in the past
8 litigation to have been partially right --

9 MR. MOXON: Is it relevant to this case?

10 MR. YANNY: I'll show in a second.

11 MR. MOXON: We're always trying catch up,
12 but we never get the actual relevance.

13 MR. YANNY: I think that's why you
14 protest so hard is because you know the relevance.

15 THE REFEREE: Thank you folks.

16 I note an objection. The question is was
17 there a settlement, and that's a yes or no I believe.

18 A There was a partial settlement.

19 Q BY MR. YANNY: Has the terms --

20 Was that a written settlement instrument?

21 A Yes.

22 Q Has that settlement instrument, since
23 it's entry, become public record?

24 A Yes.

25 Q Is that in the court of appeals?

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1 A Yes.

2 Q Is it also public record, to your
3 knowledge, in the "Corydon v Scientology" case in the
4 Los Angeles Superior Court files?

5 A It was at one time.

6 Q Has that also been made public record in
7 the Marin County case these people have just filed
8 against you?

9 A Yes.

10 MR. MOXON: I also object to this whole
11 line of question as leading.

12 THE REFEREE: They have been leading, but'
13 I figure it's saving a little time.

14 Now, let's see if I understand what
15 ya'all are saying. Ya'all are saying that the
16 settlement agreement in Armstrong I -- if I understand
17 it correctly, if I understand the terminology
18 correctly -- has been breached in some fashion and
19 that the agreement is a matter of public record in the
20 court records of the Marin County Superior Court, is
21 that correct?

22 MR. GREENE: Yes.

23 MR. BERRY: Scientology's own counsel up
24 there, Mr. Wilson, said so in the public record two
25 weeks ago.

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15
1 MR. MOXON: I object to one thing, that
2 is that Scientology is the name of a religion, Mr.
3 Berry, as you know. There is a specific plaintiff up
4 there apparently.

5 I also have yet to see any relevance of
6 the entire line of questioning to any issue in this
7 case.

8 MR. YANNY: If I might show you.

9 THE REFEREE: I realize you have a
10 continuing objection. I'm still seeking the relevance
11 and we'll see where we are.

12 MR. BERRY: I might add that the Flynn
13 settlement agreements and their circumstances
14 surrounding their entry into and specifically
15 discussed in the affirmative defense in this case.

16 Q BY MR. YANNY: Your agreement, the
17 agreement of Armstrong settling the portion of your
18 case which settled, which is now moved into the public
19 record in a number of locations, was only one of a
20 series of Flynn agreements, is that your
21 understanding?

22 A Yes.

23 MR. MOXON: Objection, leading question.

24 THE REFEREE: It is a leading question.
25 Put 'em in a different form.

000701

15 1 There were a series of Flynn settlements?

2 THE WITNESS: Right.

3 MR. MOXON: I request an admonition to
4 the witness.

5 We have all these leading questions.
6 When I asked him a question he would wait five or 10
7 seconds before he answered. Now he answers
8 immediately.

9 THE REFEREE: Any time there is a
10 question, just wait.

11 Q BY MR. YANNY: In addition to your --
12 Do you consider your agreement -- I'll
13 rephrase it.

14 Mr. Armstrong, do you consider the
15 Armstrong settlement agreement to be one of the Flynn
16 settlement agreements?

17 MR. MOXON: Objection, leading.

18 THE REFEREE: Or not?

19 Q BY MR. YANNY: Or not?

20 A Yes.

21 Q Now, where were you employed at the time
22 of the settlement agreement, if anyplace?

23 A At the law firm of Flynn Joyce and
24 Sheridan, in Boston.

25 Q Who was acting as your counsel at that

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16 1 time in the Armstrong case, if anyone?

2 A Michael Flynn.

3 Q Were you aware of any other agreements
4 besides yours that was entered into at or about the
5 same time as your settlement agreement?

6 A Yes.

7 Q Can you estimate for us how many other
8 settlement agreements involving the organization and
9 Mr. Flynn's clients?

10 A Approximately 15 at that time.

11 MR. MOXON: I object to this line of
12 questioning dealing with a case up in Marin County
13 that has nothing to do with this case, if we're
14 seeking testimony for the Marin County case in which
15 there is the order.

16 We should make that plain on the record.

17 THE REFEREE: I'm still waiting for the
18 tie-in.

19 Q BY MR. YANNY: Judge, here it is.

20 Mr. Armstrong, did any of those other
21 agreements to which you've made reference require that
22 people who were situated as you, with access to
23 documents related to the organization such as the
24 seized documents, did any of those other agreements
25 require that those other defendants turn those

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1 documents back over to the organization?

2 MR. MOXON: Objection, leading question.

3 THE REFEREE: That's not really leading.

4 Did they require that?

5 A Yes.

6 Q BY MR. YANNY: Did those agreements also
7 require, as did your agreement, that you not
8 voluntarily assist people in the future in litigation
9 against Scientology?

10 A Yes.

11 Q Did any of the documents that were turned
12 over illustrate over a period of time any tortious or
13 criminal activities?

14 MR. MOXON: Objection, leading question.

15 Lack of foundation.

16 THE REFEREE: It's a yes or no.

17 In your understanding?

18 A Yes.

19 Q BY MR. YANNY: Are those documents now
20 readily available anyplace?

21 MR. MOXON: Objection, calls for a
22 conclusion without foundation.

23 THE REFEREE: Do you know whether they
24 are available anywhere?

25 A Some of them are. Some of them are not.

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17
1 Q BY MR. YANNY: Are you aware of any
2 published depositions or written articles that predate
3 the seizure the raids by the Federal Government in '77
4 up to the present, regarding Scientology and the
5 practice of the fair game policy?

6 MR. MOXON: Objection, calls for a
7 hearsay response.

8 It's irrelevant to the case.

9 MR. YANNY: It's discovery.

10 MR. MOXON: It doesn't discover anything.

11 THE REFEREE: First, you can answer this
12 yes or no. And then there is going to have to be some
13 showing as to the basis of your answer.

14 A Could you give me that time period again
15 that you're referring to?

16 Q BY MR. YANNY: Are you aware of any
17 articles or published legal opinions that both predate
18 the seizure or the raids by the United States
19 Government in 1977 on the GO's office and come up to
20 the present regarding Scientology and/or the practice
21 of fair game?

22 MR. MOXON: I object, the question is
23 vague, ambiguous, confusing.

24 THE REFEREE: Sustained as to form.

25 A (No response)

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1 Q BY MR. YANNY: Are you aware of any
2 published opinions regarding the practice of fair game
3 within the meaning of Scientology doctrines? -

4 A Yes.

5 Q Could you outline for us, just briefly,
6 some of them?

7 A "Allard versus Church of Scientology,
8 California."

9 Q Do you have an approximate vintage for
10 that?

11 A 1970 perhaps.

12 Q Does it predate, to your knowledge, "the
13 raid" as it has become affectionately referred to in
14 Scientology in 1977?

15 A Yes.

16 Q Any other published opinions regarding
17 the practice of fair game that you know of?

18 A "Wollersheim versus Church of
19 Scientology."

20 Q What was the date on that?

21 MR. MOXON: I object Your Honor.

22 Your Honor, we've gone on for a couple of
23 hours without tying any of this together. Mr. Yanny
24 is now asking the witness to tell him about legal
25 decisions he's read at some object point in the past,

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1 Church organization, or was a part of a pattern to
2 seek to inhibit the discovery of Church information,
3 maybe that's something that you all want to be heard
4 further on.

5 But it just -- nobody has -- Mr.
6 Armstrong hasn't been dragged kicking and screaming
7 here, and has hardly opened his mouth. You could
8 never say that's the situation we find ourselves in
9 today.

10 MR. YANNY: Can I lay a foundation?

11 MR. MOXON: I suggest that this is a
12 matter which is before the court in Marin County. Mr..
13 Yanny has already filed something up there to get
14 relief from that order. This is not the appropriate
15 place based just on the oral representations of
16 counsel to make any ruling of this issue.

17 Obviously it's a subject of vast
18 pleadings according to Ms. Bartilson in the phone
19 conversation. I haven't had a chance to meet with her
20 on this.

21 Something like a 70 page brief was filed
22 on behalf of Mr. Yanny on behalf of Mr. Armstrong up
23 there on these issues. I see no utility in taking the
24 issue away from the court where it's properly to be
25 determined and bringing it down here where it could

1 potentially be determined on a very inadequate record.

2 MR. BERRY: I'm lost as to what we are
3 deciding at this particular moment.

4 THE REFEREE: We're deciding whether Mr.
5 Armstrong should be required to give a dollar amount
6 that he received from Mr. Flynn as his part of a
7 settlement agreement.

8 MR. YANNY: Can I lay a little more
9 foundation?

10 THE REFEREE: Yes. Just briefly
11 hopefully.

12 Q BY MR. YANNY: Mr. Armstrong, as part of
13 the agreement that has been filed -- the Armstrong
14 agreement that we have thus far seen, the one that's
15 been filed in Marin County and has been part of the
16 court of appeals down here -- does that include a
17 provision, does that portion of the agreement include
18 a provision that Mr. Flynn not take cases against the
19 organization in the future?

20 MR. MOXON: I object again.

21 Q BY MR. YANNY: To your knowledge?

22 A No.

23 MR. MOXON: There's no foundation laid
24 that in fact these matters are public record.

25 THE REFEREE: The answer is no, that it

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1 didn't require such an inhibition. Is that your
2 understanding?

3 THE WITNESS: That -- my understanding is
4 this: That the agreement which has now been filed up
5 there which is called the "settlement agreement" that
6 I signed, does not include within it the statement
7 that my lawyers may not take cases adverse to
8 Scientology and may not represent me in my future
9 litigation, but that a separate agreement that the
10 lawyers entered into with Scientology does include
11 that.

12 THE REFEREE: How do you know that?

13 THE WITNESS: I have spoken to them. I
14 asked them to assist me.

15 THE REFEREE: That's what they've said?

16 THE WITNESS: Right.

17 MR. MOXON: Obviously the Church of
18 Scientology would be a beneficiary to that agreement
19 based on what Mr. Armstrong says is correct.

20 THE REFEREE: I understand that.

21 Here's my thought. When is the hearing
22 on Mr. Yanny's Marin County motion?

23 MR. GREENE: Friday.

24 MR. BERRY: There is several motions.
25 There is the motion for preliminary injunction to

1 enjoin Mr. Armstrong from dealing with us at all
2 outside of this deposition room, and there is our
3 motion to intervene to approve that amount and amicus
4 curiae to enable us to in fact gather evidence from
5 Mr. Armstrong outside of this deposition room forward,
6 and there is a motion on behalf of Mr. Armstrong to
7 transfer the entire area to the L.A. Superior Court.

8 THE REFEREE: Here's the referee's
9 decision on this particular point.

10 I'm reserving a ruling pending the order
11 of the, whatever order the court makes in Marin
12 County.

13 I'm asking the court reporter to leave,
14 to include a statement on behalf of Mr. Armstrong that
15 the amount is blank. I'll decide at a later time
16 whether to give you a written order to fill in that
17 blank.

18 THE WITNESS: That's fine.

19
20 (INFORMATION REQUESTED: _____)

21
22 (The amount is _____)

23
24 THE REFEREE: And I'm ordering you at
25 this time to comply with whatever order I give subject

1 to whatever other influences --

2 THE WITNESS: I'd be happy to Your Honor.

3 THE REFEREE: -- you may be under.

4 And we'll see. So far I really haven't
5 seen the basis for requiring the answer in the face of
6 the instruction from counsel. But it may well be the
7 appropriate thing to do.

8 MR. MOXON: In advance I would like to
9 register the objection if the court provides such an
10 order to Mr. Armstrong if Mr. Yanny's position
11 prevails.

12 THE REFEREE: I wouldn't send it without
13 everybody having another shot at it, believe me. In
14 other words if you want me to read what everybody is
15 talking about up in Marin County you have to provide
16 it.

17 If you want to brief something I will
18 have a chance to do so. So we can take Mr. Armstrong
19 as far along today as we can.

20 MR. MOXON: I'm referring to if we have
21 an opportunity to appeal it to Judge Cardenas if
22 necessary before Mr. Armstrong decides to give the
23 information.

24 THE REFEREE: Alright.

25 I'm sure he won't give the information

1 without an order to do so.

2 THE WITNESS: I'll restrain myself Your
3 Honor.

4 MR. GREENE: I'm instructing you to.

5 MR. MOXON: So am I.

6 Q BY MR. YANNY: Aside from the agreement
7 that, or the portion of the Armstrong agreement which
8 has been filed in the court up in Marin County, have
9 you become aware of any indemnification agreements
10 regarding yourself, Mr. Flynn and the organization?

11 A Yes.

12 Q Were those parts of any documents that
13 were prepared and signed by you?

14 A No.

15 Q Do you understand any of the terms of
16 those indemnifications?

17 A Yes.

18 Q Would you tell us what they are?

19 MR. MOXON: Any of the terms?

20 MR. YANNY: Yes.

21 A The indemnification agreement that I know
22 of concerns the appeal that the organization maintain
23 pursuant to the settlement agreement of the underlying
24 case in Armstrong I. That was the organization's
25 lawsuit against me for conversion of the Hubbard

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1 archived documents when I sent them to my lawyers.

2 They appealed from the decision and --

3 Q BY MR. YANNY: Who appealed?

4 A The organization appealed from the
5 decision of Judge Breckenridge, 1984.

6 And Michael Flynn, along with
7 organization lawyers, Larry Heller and Earle Cooley,
8 entered into an agreement whereby they agreed that if
9 the Breckenridge decision was reversed, the matter was
10 retried and damages were assessed against me, these
11 damages would not be in an amount greater than 25,000
12 and one dollar.

13 And that if I had to pay the amount of
14 the damages that Michael Flynn would reimburse me, and
15 the organization lawyers would reimburse Flynn for the
16 amount of the damages.

17 Q Were any of those indemnification
18 agreements, to your knowledge, ever presented to any
19 of the courts?

20 A Yes.

21 Q When?

22 A The one that I have just described was
23 included in appellant's supplemental appendix to the
24 second appeal which the organization filed to the
25 Breckenridge decision. And it was filed in I believe

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1 December of 1989 in the court of appeal.

2 Q So if I understand your testimony there
3 was a decision rendered by Judge Breckenridge that the
4 organization did not like?

5 A Correct.

6 Q They wanted to take an appeal on that?

7 A They did appeal. They filed a Notice of
8 Appeal in 1984.

9 Q And took an appeal?

10 A Yes.

11 Q They eventually took an appeal?

12 A Yes.

13 Q If you lost that appeal the net effect to
14 you, dollarwise, would be zero?

15 A Or one I believe.

16 Q Or one dollar?

17 A Right.

18 Q So then there was a contrived appeal?

19 MR. MOXON: Objection, calls for a
20 conclusion.

21 It's a leading question.

22 THE REFEREE: Sustained. I think we have
23 been over this enough.

24 Q BY MR. YANNY: Subsequent to these
25 agreements being entered --

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1 Let me ask you this.

2 These indemnification agreements, have
3 you seen dates on these agreements?

4 A My recollection is that the one I'm
5 referring to is December 10, 1986.

6 Q And do you recall the date on your
7 agreement?

8 A December 6, 1986.

9 Q So this was at or about the same time, or
10 part of the same series of transactions?

11 A Right.

12 MR. MOXON: Continuing objection as to
13 the relevancy of any of this. It still has not been
14 tied together by Mr. Yanny.

15 Q BY MR. YANNY: Are you sure there was all
16 of the agreements that were entered into in settlement
17 of your case or any of the Flynn cases?

18 A No.

19 Q Subsequent to the agreements that you've
20 just set forth, did you have a difficult time in
21 obtaining counsel?

22 MR. MOXON: Objection, leading question.

23 THE REFEREE: Did you or did you not?

24 A Yes.

25 Q BY MR. YANNY: Did you talk to any number

1 of people to get representation?

2 MR. MOXON: Objection, leading question.

3 THE REFEREE: Sustained as to form.

4 A (No response)

5 Q BY MR. YANNY: How many people do you
6 recall talking to before you finally ended up getting
7 representation for the appeal?

8 A In the appeal itself?

9 Q Yes.

10 A At the time of the appeal when I again
11 became involved in litigation, actively involved, at
12 the time that the second appeal -- that is the opening
13 brief was filed -- I merely attempted at that time
14 with Michael Flynn, at which time he advised me that
15 he would not be involved, and I made the decision at
16 that time to proceed alone.

17 Subsequently I did obtain assistance in
18 that appeal from another lawyer who subsequently
19 desired to end his representation of me with regards
20 to the appeal and the organization.

21 Q Did you become aware at any point in time
22 during your involvement with the organization of
23 attempts by the organization to blackmail judges?

24 MR. MOXON: Objection, leading question.

25 Calls for a conclusion.

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1 Utterly irrelevant.

2 And an improper question.

3 But primarily that's a leading question.

4 THE REFEREE: Sustained as to form.

5 Q BY MR. YANNY: Did you or did you not
6 during your period of involvement with the
7 organization become aware of attempts to blackmail
8 judges?

9 MR. MOXON: Same objection. Same
10 question.

11 THE REFEREE: That's something you can
12 answer yes or no.

13 MR. MOXON: Lack of foundation also.

14 THE REFEREE: We'll get to that in a
15 minute.

16 A Yes, I do.

17 Q BY MR. YANNY: Could you identify the
18 judges please?

19 THE REFEREE: First, I haven't heard any
20 foundation yet.

21 MR. MOXON: There can't be any
22 foundation. This is just an utter sham.

23 I object to Mr. Yanny's cooperation with
24 this witness in perpetrating this fraud.

25 THE REFEREE: All right.

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1 I have objected to the question pending
2 Mr. Yanny. I don't see any foundation for this
3 knowledge.

4 Q BY MR. YANNY: Upon what do you base that
5 conclusion, sir?

6 What facts or knowledge do you have to
7 support them?

8 A While in the organization I became aware
9 of an operation involving Judge Ritchie, Federal
10 District J.

11 Q That's in Washington, D.C.?

12 A He was trying the "U.S. v. Hubbard" case.

13 Q From whom did you gain that information?

14 MR. MOXON: What information?

15 Q BY MR. YANNY: What information did you
16 obtain?

17 I'll withdraw the other question.

18 A The information as I recall it was an
19 effort in involving an ORG private investigator by the
20 name of Bast, to compromise Judge Ritchie with a
21 prostitute.

22 MR. MOXON: I strongly object.

23 It's a matter of public record, Your
24 Honor, that Judge Ritchie re-excused himself from this
25 case.

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1 MR. YANNY: Do you want to tell him after
2 what?

3 MR. MOXON: After Judge Ritchie utilized
4 federal marshals to solicit from him he re-excused
5 himself from the case. There is formal testimony from
6 the marshals that he did that.

7 Something that Mr. Yanny attempted to
8 defend years ago, knowing that it was false, and now
9 is attempting to try to splatter the record with this,
10 it's highly objectionable.

11 If you want to go on with this irrelevant
12 stuff I'll just sit here and continue to make my
13 objections. I strongly object to the fact that I have
14 been forclosed in asking what I consider to be
15 relevant questions, and now we're getting this stuff
16 that Mr. Yanny has never tied together. We have been
17 waiting for two hours.

18 MR. BERRY: Once again, the witness
19 didn't finish his answer.

20 A This is all pretty far fetched. I really
21 can't --

22 It's all of a very, very general nature
23 and it's becoming cumulative if, and nothing else.
24 It's now 25 minutes after. What's your plan
25 gentleman?

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1 MR. YANNY: Twenty-five after --

2 THE REFEREE: Four.

3 MR. MOXON: I have about three hours of
4 cross-examination.

5 THE REFEREE: I'll leave it to ya'all to
6 manage how you're going to proceed. You know how many
7 days you have booked. You have an idea of what else
8 you need to do.

9 The present schedule calls for the
10 counsel to be examined on Wednesday and Thursday,
11 which would mean that Mr. Armstrong and Mr. Greene and
12 Ms. Phippany will be coming down here again on some
13 occasion.

14 Or you can take them tomorrow. It's up
15 to you all to figure out how you're going to do it.

16 MR. GREENE: Just to respond --

17 THE REFEREE: Off the record.

18 MR. GREENE: I'd like this on the record.

19 THE REFEREE: Fine.

20 MR. GREENE: I'd have a problem with
21 staying here tomorrow. Mr. Moxon's San Francisco
22 co-counsel knowing that I have been down here
23 apparently has been giving notice to an answering
24 machine in my office while I have been here of ex
25 parte application in his Armstrong II in Marin County.

1 STATE OF CALIFORNIA)

2
3 COUNTY OF LOS ANGELES)

4
5 I, JAN W. SERRA, CSR No. 8207,
6 Certified Shorthand Reporter, certify:

7 That the foregoing proceedings were,
8 taken before me at the time and place therein set
9 forth, at which time the witness:

10 GERALD ARMSTRONG,

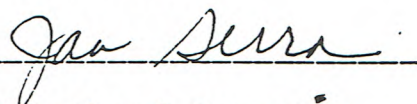
11 was put under oath by me;

12 That the testimony of the witness And
13 all objections made at the time of the examination
14 were recorded stenographically by me and were
15 thereafter transcribed;

16 That the foregoing is a true and correct
17 transcript of my shorthand notes so taken.

18 I further certify that I am not a
19 relative or employee of any attorney of any
20 of the parties, nor financially interested in
21 the action.

22 Dated this March 17, 1992.

23 
24 _____
25 Certified Shorthand Reporter